Supreme Court, U.S.
FILED
DEC 1 1986
JOSEPH F. SPANIOL, JR.
CLERK

86-930
NO.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

STATE OF ILLINOIS,

Petitioner,

vs.

JAMES EALY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

NEIL F. HARTIGAN,
Attorney General
State of Illinois
MARK L. ROTERT,
Assistant Attorney General
100 West Randolph Street
Suite 1200
Chicago, Illinois 60601

Attorneys for Petitioner.

RICHARD M. DALEY
State's Attorney
Cook County, Illinois,
500 Richard J. Daley Center
Chicago, Illinois 60602
THOMAS V. GAINER, Jr.,*
RIMAS F. CERNIUS,
Assistant State's Attorneys
Of Counsel

*Attorney of Record.
(312) 443-5496

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

NO.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

STATE OF ILLINOIS,

Petitioner,

vs.

JAMES EALY,

Respondent.

**PETITION FOR A WRIT OF CERTIORARI
TO THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT**

NEIL F. HARTIGAN,
Attorney General
State of Illinois
MARK L. ROTERT,
Assistant Attorney General
100 West Randolph Street
Suite 1200
Chicago, Illinois 60601

Attorneys for Petitioner.

RICHARD M. DALEY
State's Attorney
Cook County, Illinois,
500 Richard J. Daley Center
Chicago, Illinois 60602
THOMAS V. GAINER, Jr.,*
RIMAS F. CERNIUS,
Assistant State's Attorneys
Of Counsel

* Attorney of Record.
(312) 443-5496

QUESTIONS PRESENTED

1.

Whether the police may question a person at the police station even though they do not have probable cause to arrest him when he consents to come to the station for questioning.

2.

Whether the evidence recovered from the search of defendant's bedroom and defendant's confessions are admissible even though the police did not have probable cause to arrest defendant when they asked him to come to the station for questioning, where defendant consented to come to the station and where his subsequent consent to search and his subsequent confessions were voluntarily given.

3.

Whether defendant's confessions and the evidence recovered from a search of his bedroom are admissible even if his arrest was illegal, where intervening circumstances purged the taint of the illegality and the police conduct was not flagrant.

TABLE OF CONTENTS

	PAGE
Questions Presented	i
Table of Contents	ii
Table of Authorities	iv
Opinion Below	2
Jurisdiction	3
Constitutional Provisions Involved	4
Statement of the Case	6
Reasons for Granting the Writ	21

I.

DEFENDANT WAS NOT SEIZED FOR FOURTH AMENDMENT PURPOSES WHEN HE AGREED TO GO TO THE POLICE STATION TO BE QUESTIONED ABOUT A MURDER.

II.

DEFENDANT VOLUNTARILY CONSENTED TO A SEARCH OF HIS BEDROOM AND VOLUNTARILY CONFESSED, AND THEREFORE THE EVIDENCE WHICH THE POLICE RECOVERED FROM HIS BEDROOM AS WELL AS HIS CONFESSION WERE PROPERLY ADMITTED AT HIS TRIAL.

III.

EVEN IF DEFENDANT WAS ILLEGALLY ARRESTED, INTERVENING CIRCUMSTANCES PURGED THE PRIMARY TAINT, AND SO DEFENDANT'S CONFESSIONS AND THE EVIDENCE RECOVERED FROM HIS BEDROOM WERE PROPERLY ADMITTED.

Conclusion..... 38

Appendix A — Opinion of the Appellate Court of Illinois, First Judicial District, in People v. Ealy, 146 Ill. App. 3d 557, 497 N.E.2d 101 (1st Dist. 1986).....Appendix 1

Appendix B — Order of Supreme Court of Illinois, denying petition for leave to appeal in People v. Ealy, ...Appendix 20

TABLE OF AUTHORITIES

CASES	PAGE
Dunaway v. New York, 442 U.S. 200, 99 S. Ct. 2248, 60 L. Ed. 2d 824 (1979).....	21, 22, 35, 36
United States v. Mendenhall, 446 U.S. 544, 100 S. Ct. 1870, 64 L. Ed. 2d 497 (1980).....	23, 25
Schneckloth v. Bustamonte, 412 U.S. 218, 93 S. Ct. 2041, 36 L. Ed. 2d 854 (1973).....	25
Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602 (1966).....	28
Boulden v. Holman, 394 U.S. 478, 89 S. Ct. 1138, 22 L. Ed. 2d 433 (1969).....	28
Wong Sun v. United States, 371 U.S. 471, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963).....	32
Brown v. Illinois, 422 U.S. 590, 95 S. Ct. 2254, 45 L. Ed. 2d 416 (1975).....	32, 33, 35, 37

NO.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

STATE OF ILLINOIS,

Petitioner,

vs.

JAMES EALY,

Respondent.

**PETITION FOR A WRIT OF CERTIORARI
TO THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT**

Petitioner, the State of Illinois, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Appellate Court of Illinois, First Judicial District, which was entered on March 31, 1986.

OPINION BELOW

The published opinion of the Appellate Court of Illinois, First Judicial District, is reproduced in Appendix A to this Petition.

JURISDICTION

The opinion, order and judgment of the Appellate Court of Illinois, First Judicial District, were entered on March 31, 1986. The People of the State of Illinois then petitioned the Supreme Court of Illinois for leave to appeal. On October 2, 1986, the Supreme Court of Illinois denied the petition for leave to appeal. This Petition for a Writ of Certiorari is filed within 60 days of that date. United States Supreme Court Rule 20(1). The decision of the Appellate Court of Illinois was explicitly based on federal constitutional law. Specifically, the Appellate Court of Illinois held that defendant was illegally seized in violation of the Fourth Amendment. Accordingly, the jurisdiction of this Court is invoked under 28 U.S.C. sec. 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

UNITED STATES CONSTITUTION - FOURTH AMENDMENT

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

UNITED STATES CONSTITUTION - FIFTH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

UNITED STATES CONSTITUTION - FOURTEENTH AMENDMENT (Section 1)

All persons born or naturalizied in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On August 16, 1982, at about 12:45 p.m. a Chicago police officer discovered the bodies of four individuals in Apartment 708 of one building of a Chicago housing project known as Rockwell Gardens. These four were 33 year old Kristine Parker, her daughters, 15 year old Mary Ann Parker and 13 year old Cora Jean Parker, and her grandson, 3 year old Jontae Parker. (R. 919-922) All four had been strangled to death. (R. 889, 894, 896, 905) Defendant James Ealy, a resident of apartment 411 in the same building, was charged with the murder of the Parker family. (R. 33, 1690-1699) A jury found defendant guilty on February 3, 1984. (R. 1638) The trial judge sentenced defendant to natural life in prison on March 2, 1984. (R. 1668-1669) The Appellate Court of Illinois reversed defendant's convictions on March 31, 1986. The Court held that defendant was illegally seized in violation of the Fourth Amendment when he went to the police station at the request of police detectives. The Court held that defendant's later confession should have been suppressed as the product of an illegal arrest. The People petitioned the Supreme Court of Illinois for leave to appeal. On October 2, 1986, the Supreme Court of Illinois denied this petition.

The following evidence was presented at the hearing on defendant's motion to suppress evidence:

On August 17, 1982, the day after the bodies of the Parker family were discovered, the Medical Examiner of Cook County performed autopsies on the bodies. He determined the cause of death for all four persons to be ligature strangulation. (R. 275-278) Detective Blomstrand of the Chicago Police Department attended the autopsies. He noticed that one leg of a pair of green surgical pants was around the neck of Mary Ann Parker. Underneath was a piece of tan material. (R. 275-282)

At about 5:00 p.m. on August 17, 1982, during roll call at Area Four of the Chicago Police Department, detective Blomstrand told the other detectives what he had seen during the autopsies. (R. 26-27, 283) Another detective related that five people were known to frequent the Parker apartment to watch ON TV. (R. 30) Detectives Thedford and Harrington were assigned to interview two of these persons, one of whom was defendant James Ealy. (R. 30-31, 90-93)

At about 9:00 p.m. on August 17, 1982, the two detectives arrived at defendant's apartment. (R. 33, 92-93) Defendant's mother Kathryn Ealy answered the door. The detectives told her that they were police officers working on

the Parker homicides. (R. 34-35) She invited them in. They spoke with her for 15-20 minutes, and then defendant James Ealy came in. (R. 35-36, 93-94) The detectives told him who they were and what they were investigating. They asked him if he would be willing to come to the station with them, and he agreed. (R. 36-37, 94-95) They did not tell him that he had to go, and he did not say that he did not want to go. The police did not handcuff him. They took him to Area Four in their squad car. (R. 37-38, 95-96) The police told defendant's mother where they were going. (R. 37) On that day defendant was 17 years old. (R. 305) He is 6 ft. 1 in. tall and weighs 205 lbs. (R. 543)

At about 9:40 p.m. the detectives and defendant arrived at Area Four. (R. 38, 96) The detectives left defendant in an interview room, and at about 10:00 p.m. they went in to talk to him. The conversation lasted about a half hour. (R. 39-40, 97) Defendant told the detectives that he had dated Mary Ann Parker for three months, but they broke up. The detectives asked him about the night of August 15-16, 1982. He told them that he got drunk with friends, went home at about 1:30 a.m., and went to sleep. (R. 40-42) The police noticed some discrepancies between defendant's story and what his

mother had told them. Detective Harrington then spoke with Mrs. Ealy who had come to the station and asked her to talk to defendant. She agreed, but defendant refused to talk to her. (R. 42-47, 97-98)

At about 10:45 - 11:00 p.m. another detective told detectives Thedford and Harrington that defendant had earlier been arrested for rape in the same building. The detectives then read the rape investigation reports. (R. 48-49) According to the Medical Examiner one of the Parker victims, three-year-old Jontae Parker, was discovered to have a lacerated and penetrated anus. (R. 276-277)

At about 11:00 p.m. detectives Thedford and Harrington went back into the room to speak with defenant. (R. 49, 99) Det. Thedford gave defendant his Miranda rights. Defendant said he understood his rights and he agreed to talk. (R. 49-50, 99-100) The detectives had a half hour conversation with defendant. During this conversation defendant mentioned that in the afternoon of August 16, 1982, he had bought some laces for his gym shoes, that he thereafter found out about the deaths of the Parkers and that after he spoke with some police officers he washed his gym shoes because they were mud-spotted. (R. 51-52) Defendant refused to take a polygraph

examination, but he agreed to a search of his room. (R. 52, 102) At about midnight detective Thedford spoke to Mrs. Ealy, and she likewise agreed to a search of her apartment. (R. 53-54, 102-103)

Detectives Switski and Vucko from the next watch prepared a consent to search form intended for Mrs. Ealy. However, at 1:30 a.m. they could not find Mrs. Ealy in the station. Then detectives Harrington and Vucko gave the form to defendant and explained it to him. He said he understood what was on the form, and he signed the form. (R. 55, 104-105)

At about 1:45 a.m. on August 18, 1982, detectives Vucko and Switski arrived at defendant's apartment. (R. 132, 191) Mrs. Ealy answered the door. The detectives told her that they wanted to look for items in defendant's bedroom and they showed her the consent to search form. Mrs. Ealy showed them to defendant's room and pointed out defendant's bed. (R. 132-134, 192) The police found three sets of shoelaces in the dresser and a bundle under the bed. Inside the bundle were two lengths of khaki-type material, one of which had two knots in it and the other had one knot, a knife handle, a green pair of surgical pants, and bedsheets with red stains. (R. 135) The detectives took the khaki material and the shoelaces. (R. 135-136, 192-193)

At about 2:45 a.m. the detectives went to detective Blomstrand's house and showed him the khaki material. He said that it looked like the material he had seen around Mary Ann Parker's neck. (R. 136, 193-194)

At about 3:30 a.m. detectives Vucko and Switski returned to defendant's building, but they went to Apartment 708, the apartment of the victims. In a closet they found a trench coat with the same type of khaki-colored material. The belting of the coat was missing. They also found a knife without a handle. This knife appeared to match the handle they had seen in the bundle under defendant's bed. (R. 137-138, 194) At about 4:15 a.m. they returned to Area Four. Detective Switski closed and locked the door of the room where defendant was. (R. 138, 213-214)

At about 5:00 a.m. detectives Vucko and Switski had a conversation with defendant. Detective Switski gave defendant his Miranda rights. Defendant said he understood his rights and was willing to talk. (R. 139-140, 195-196) The detectives then showed defendant the khaki-material, the trench coat and the knife blade they had found. Defendant then told the detectives that on August 15, 1982, at about 11:30 p.m. he saw a male black run from Apartment 708 with a large

bundle. The man dropped the bundle, and defendant picked it up. Defendant then went into apartment 708 where he discovered the bodies of the four Parkers. All four were dead. He took the bundle to his apartment and put it under his bed. He did not know why he picked up the bundle, and he could not explain why he did not call the police. (R. 140-142, 565-566)

After defendant made this statement the police asked him to sign a second consent to search form so that they could recover the bundle. Defendant agreed and signed. (R. 142-143, 196-197) At 6:00 a.m. the detectives returned to defendant's apartment. Mrs. Ealy allowed them in. They showed her the consent to search form which defendant had signed, and they then recovered the bundle. The bundle contained bedsheets with red stains, a knife handle and green surgical pants. (R. 143-144, 198-199)

The detectives returned to Area Four, and at 9:30 a.m., together with detective Blomstrand, they had a conversation with defendant. Defendant was again advised of his Miranda rights and indicated he understood. Detective Vucko then told defendant that what he had told them did not make sense. Defendant became excited, started crying and said he would tell the truth. He then related that at 11:30 p.m. on

August 15, 1982, he went to the Parker residence. He had been drinking. Cora Jean Parker and Kristine Parker made fun of his red eyes. He then made Cora Jean lie down and made Kristine kneel down in the bedroom. He got a belt from the closet, put it around Kristine's neck, made her beg for her life and strangled her. He then tied up Cora Jean with a red sock. He heard a knock and saw Mary Ann Parker. He put a belt around her neck, took her into the bathroom and strangled her. He took Jontae Parker into the bathroom also and strangled him. He then got Cora Jean, untied her, strangled her and threw her into a closet. (R. 148-149)

After defendant made this oral confession, the police called the State's Attorney's Office. At about 11:00 a.m. Assistant State's Attorney Christine Campbell arrived at the station. (R. 200, 246-247) She spoke with the detectives and then at 11:30 a.m. she had a conversation with defendant. (R. 201, 247) She introduced herself and gave defendant his rights. He said he understood his rights and wished to give a statement. Ms. Campbell then had about a half hour conversation with defendant. She asked defendant if he would agree to give a written statement and he agreed. (R. 201-202, 247-249)

Court reporter Annette Faklis was then called to the station. At 12:58 p.m. Assistant State's Attorney Campbell took a court-reported statement from defendant. The statement took about 20 minutes. Before he gave the statement defendant signed a waiver of constitutional rights form. (R. 202-204, 250-253) At about 2:30 p.m., after the court reporter finished typing the statement, Ms. Campbell gave defendant the typed statement and told him to read it over carefully. Defendant signed each page of the statement. (R. 204-206, 253-254)

The People's witnesses testified that defendant did not request a lawyer or ask to make a phone call. (R. 59, 107, 207, 256-257) Defendant did not ask to see his mother, and his mother did not make repeated attempts to see him. (R. 59, 107-108, 149-150, 208, 288) Defendant did not try to leave the station. (R. 57, 106, 149-150, 207) The police did not wake up defendant or prevent him from sleeping. (R. 59, 150, 207)

After the People rested their case on the motion, defendant's mother testified on his behalf. She described police visits to her house after the Parker murders. On August 16, 1982, some officers left a card and told her to have her son James call if he has any information about the murders. (R.

319-321) On August 17, 1982, in the early evening two officers came to her house, and one of them asked in a raised voice why didn't James call. (R. 321-322) She sent her other son Virgil to get James. When James came in one of the officers told him that it was necessary for him to come down to the police station with them. Defendant said "yeah" and told them that he had a date for 9:00 p.m. Mrs. Ealy asked how long defendant would be gone and the police told her not very long. (R. 324-325) The police left with defendant. Mrs. Ealy went to the station but was told she would not see her son. At about midnight or 12:30 a.m. she went home. (R. 325-340)

At abour 1:30 a.m. police officers knocked at her door. One officer handed her a consent to search form and told her to sign. She refused. The police went to defendant's room, pulled a bundle out from under her son Virgil's bed and opened it up. They took shoestrings and belt ties and left. (R. 342-348)

At about 5:30-6:00 a.m. the same two officers knocked on her door and showed her a paper which defendant had signed. She told the police that they had no right to search her apartment, but they pushed past her and went to defendant's room. They asked her where the bag was, and she gave it to them. (R. 348-352)

The next morning she went to the police station. She saw her son at about 3:00 p.m. He was trembling and crying. (R. 355, 390-392)

On cross-examination Mrs. Ealy stated that she invited the police into her apartment when they came there on August 17, 1982, in the evening. (R. 398-400) When defendant appeared she told him that the police told her he had to go to the station. He did not tell the police he did not want to go to the station. (R. 405) He said he had a date at about 9:00 p.m. (R. 404) He was not handcuffed. (R. 406) Mrs. Ealy also testified that there are three bedrooms in her apartment and that when the police came at about 1:00 a.m. they went to defendant's room even though she did not tell them where to go and even though they had never been in her house before. (R. 414-415)

Beverly Bearden of Catholic Charities testified that she got to the police station at about 1:45-2:00 p.m. on August 18, 1982. She asked to see defendant but was told she would have to wait. She saw defendant at 3:03 p.m. (R. 434-438)

Defendant James Ealy testified on his own behalf. He testified that when the police came to his mother's apartment in the evening of August 17, 1982, his mother told

him that the detectives wanted to take him down to the station. (R. 471-472) In the station he was put in a room and the door was closed. He knocked on the door and told the police that he had a date at 9:00 p.m. (R. 473-474) The police questioned him for 30 minutes, left, came back and questioned him again. They accused him of killing the Parker family, but he denied doing so. (R. 475-477) The police asked him to sign a consent to search form and told him that they wanted to get shoelaces. Defendant signed the form. (R. 478-479) The officers left and defendant fell asleep on the table. (R. 480)

Later the police came back, woke him up and showed him shoelaces and a bundle. He told the police that he got the bundle from the 7th floor by the chute. He explained that he lives on the 4th floor but he always rides the elevator to the 13th floor and walks down. He told the police that he was intoxicated the night he found the bundle and that he played with it using it as a basketball. (R. 481-482)

Later when defendant was trying to sleep, he was knocked out of his chair. One officer grabbed him by the arm and another beat him in the ribs. Defendant then agreed to sign a confession because he was tired of the beating and wanted to see his mother. (R. 483-484) Defendant testified that he was

questioned all night, got no food, no drink, and was not allowed to talk to anyone. Every time he tried to sleep, a police officer snatched the chair from under him. (R. 484-486) Defendant testified that he confessed to the State's Attorney because he was afraid that the officers were going to jump on him again, but he did not tell the State's Attorney what the police had been doing. (R. 488)

On cross-examination defendant testified that when the police came to his apartment on August 17, 1982, he told them that he would go with them. (R. 516) The police did not pull out guns or raise their voices and they did not handcuff him. (R. 514-516) While in the squad car he never tried to get out. (R. 516) He acknowledged that the police did not force him to sign the consent to search form. (R. 521-523)

When the police came back with the bundle, one officer touched him on the shoulder and told him to get up. The officer did not knock him off the chair and did not punch him in the ribs. (R. 523-524) Defendant claimed that he only signed one document. (R. 525, 531) Defendant acknowledged that he never asked the first or the second team of detectives for food and that one of the detectives from the first team asked him if he wanted to go to the the bathroom and let him go. (R. 540-541)

Defendant claimed that a big white detective, 6 ft. 2 in. tall, weighing 240-250 lbs. with sandy brown hair punched him in the ribs about twelve times. When defendant agreed to confess this detective left and a different one came in. According to defendant the police told him what to say. (R. 542-500) Defendant acknowledged that he signed the rights waiver form and that he signed each page of the court-reported statement. One of the questions in the statement was whether the police had treated defendant all right. Defendant answered yes. Another question was whether the police asked him if he wanted anything to eat or drink or if he wanted to go to the bathroom. Defendant answered yes. (R. 551-554)

In rebuttal the People introduced a certified statement of conviction which showed that on November 5, 1982, defendant was convicted of rape, deviate sexual assault and unlawful restraint and sentenced to 23 years in prison. (R. 556-557) In addition, detective Vucko testified in rebuttal that no 6 ft. 2 in., 240-250 lbs. detective with sandy blond hair was involved in the investigation of the Parker murders. Detective Vucko also testified that no one ever beat defendant in his presence and defendant never complained of being beaten. Detective Vucko offered defendant food and drink. (R. 568)

Neither detective Vucko nor any officers in his presence ever told defendant what to say. (R. 568)

The trial judge denied defendant's motion. The trial judge ruled that defendant consented to come to the station for an interview, that defendant knowingly and voluntarily signed the two consent to search forms, that the detectives were courteously received at defendant's apartment on both occasions when they went there with the forms, and that defendant's confession was knowingly and voluntarily given. (R. 631-636)

REASONS FOR GRANTING THE WRIT

I.

DEFENDANT WAS NOT SEIZED FOR FOURTH AMENDMENT PURPOSES WHEN HE AGREED TO GO TO THE POLICE STATION TO BE QUESTIONED ABOUT A MURDER.

The Appellate Court of Illinois ruled that defendant Ealy was illegally seized in violation of the Fourth Amendment when the police took him from his home to the police station to question him about a murder they were investigating. The Appellate Court found that defendant's detention resembled a traditional arrest. The court relied on this Court's decision in Dunaway v. New York, 442 U.S. 200, 60 L. Ed. 2d 824, 99 S. Ct. 2248 (1979), to conclude that because the police had no probable cause to arrest defendant when they took him to the station, his subsequent confession should have been suppressed as the product of an illegal arrest. The State of Illinois asserts that in so ruling the Appellate Court ignored the direct finding of the trial judge that defendant consented to come to the station for an interview. The Appellate Court apparently read this Court's decision in Dunaway as holding that police may not question anyone at a police station absent probable cause to

arrest even if the person being questioned consents to come to the station for questioning. The State of Illinois asserts that this is a misreading of Dunaway. The State of Illinois urges this Court to grant certiorari to correct the error of the Illinois Appellate court.

This Court emphasized in Dunaway v. New York that the defendant there was taken to the police station involuntarily. The detectives who took defendant to the station had been ordered to "pick up" defendant and "bring him in." He would have been physically restrained if he had refused to accompany the officers or had tried to escape their custody. The situation in the instant case was not comparable.

The detectives who arrested defendant Ealy told him they were investigating the Parker homicides. They asked him if he would be willing to come to the station with them, and he agreed. (R. 34-37, 94-95) They did not tell him that he had to go, and he did not say that he did not want to go. The police did not handcuff him. They told his mother where they were going and then took him to the station in a squad car. (R. 37-38, 95-96)

Even the testimony of defendant himself was not significantly different. He testified that his mother told him

the detectives wanted to take him down to the station. (R. 471-472) He acknowledged that he told the police he would go with them but he told them that he had a date at 9:00 p.m. (R. 473-474, 516) Defendant admitted that the police did not pull out guns or raise their voices or handcuff him. (R. 514-516) While he was in the squad car he never tried to get out. (R. 516)

At the station the police put defendant in an interview room. (R. 39-40, 97) The evidence showed that the interview room door was not locked at that time, since detective Switski testified that he locked the door after 4:00 a.m. after evidence incriminating defendant in the murders had been found in defendant's bedroom. (R. 138, 213-214) It is also significant that when the police first talked to defendant in the station there is no indication they gave him Miranda warnings. (R. 39, 97) When they noted some discrepancies in his story they offered his mother the opportunity to speak to him but he did not want to talk to her. (R. 46-47) All these factors show that defendant was not under arrest when he went to the police station.

In United States v. Mendenhall, 446 U.S. 544, 100 S. Ct. 1870, 64 L. Ed. 2d 497 (1980), this Court stated that a

person is "seized" only when by means of physical force or a show of authority, his freedom of movement is restrained. This Court concluded that a person has been "seized" within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave. By these standards, defendant Ealy was not "seized" within the meaning of the Fourth Amendment. The Illinois Appellate Court erred in finding an illegal seizure in the instant case.

II.

DEFENDANT VOLUNTARILY CONSENTED TO A SEARCH OF HIS BEDROOM AND VOLUNTARILY CONFESSED, AND THEREFORE THE EVIDENCE WHICH THE POLICE RECOVERED FROM HIS BEDROOM AS WELL AS HIS CONFESSION WERE PROPERLY ADMITTED AT HIS TRIAL.

The Illinois Appellate Court reversed defendant's murder convictions after holding that defendant was illegally seized when he was taken to the police station. Without discussing the subsequent consent to search forms which defendant signed, the Illinois Appellate Court implicitly held that the searches of defendant's bedroom were infected by his unlawful detention. The State of Illinois asserts that there was no impermissible seizure of defendant, as argued above. Thus, the question remains whether the defendant's consents to search were invalid for any other reason. See United States v. Mendenhall, 446 U.S. 544, 100 S. Ct. 1870, 64 L. Ed. 2d 497 (1980). The State of Illinois asserts that the trial judge was correct in determining from all the circumstances that these consents were voluntary and so were valid.

In Schneckloth v. Bustamonte, 412 U.S. 218, 93 S. Ct. 2041, 36 L. E. 2d 854 (1973), this Court held that when the

subject of a search is not in custody and the State attempts to justify a search on the basis of his consent, the Fourth and Fourteenth Amendments require that it demonstrate that the consent was in fact voluntarily given, and not the result of duress or coercion, express or implied. Voluntariness is a question of fact to be determined from all the circumstances. In the instant case the trial judge considered all the circumstances and concluded that defendant knowingly and voluntarily signed two consent to search forms.

The evidence supported the judge's decision. According to the detectives who first questioned defendant, defendant agreed to a search of his room after he spoke to the detectives at 11:00 p.m. - 11:30 p.m. on August 17, 1982. (R. 52, 102) Mrs. Ealy was also at the station at this time and she likewise agreed. (R. 53-54, 102-103) The detectives prepared a consent to search form for Mrs. Ealy, but at 1:30 a.m. she was no longer in the station. The detectives then gave the form to defendant and explained it to him. He said he understood what was on the form and he signed it. (R. 55, 104-105)

The police subsequently went to defendant's apartment and found a bundle under his bed. This bundle contained items linking defendant to the Parker homicides.

They did not seize all these items at that time, but later after further investigation they asked defendant to sign a second consent to search form so that they could recover the bundle. Defendant agreed and signed. (R. 142-143, 196-197) Even though defendant testified that he only signed one consent to search form, he acknowledged that the police did not force him to sign it. (R. 521-523, 525, 531) It is clear from all the circumstances that defendant voluntarily consented to the search of his bedroom. The Appellate Court of Illinois erred in ruling that the items recovered from defendant's bedroom should have been suppressed.

Likewise, the Appellate Court of Illinois erred in ruling that defendant's confession should have been suppressed. The trial judge specifically ruled that defendant's confession was knowingly and voluntarily given. The Appellate Court of Illinois disagreed and emphasized that defendant was in police custody for many hours, that he allegedly was not offered anything to eat or drink, was only allowed to go to the washroom once, and his attempts to sleep, if any, were interrupted by interrogation sessions. The State of Illinois asserts that the police did not abridge defendant's Fifth Amendment rights and that the Illinois Appellate Court erroneously reassessed the evidence concerning voluntariness.

It should first be noted that except for the initial interview, the detectives preceded each interview with defendant Ealy with a recitation of his Miranda rights. The detectives testified that each time defendant acknowledged that he understood his rights and was willing to talk to them. (R. 49-50, 99-100, 139-140, 145, 194-196, 199-200, 202) According to the detectives defendant never requested a lawyer. In his own testimony defendant never stated that he requested a lawyer or that he did not understand his rights. (R. 107, 207, 256) Likewise, the Assistant State's Attorney who was called to the police station advised defendant of his Miranda rights. Defendant indicated that he understood his rights and he signed a form waiving his rights. (R. 201-204, 247-253) The law enforcement officials in the instant case fully complied with the dictates of Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602 (1966).

The State of Illinois also asserts that the totality of the circumstances indicates that the trial judge correctly found that defendant's confession was voluntary. The question whether a confession was voluntarily made necessarily turns on the totality of the circumstances. Boulden v. Holman, 394 U.S. 478, 89 S. Ct. 1138, 22 L. Ed. 2d 433 (1969). The detectives

who questioned defendant Ealy testified that they did not coerce him. He was not denied an opportunity to see his mother. (R. 58-59, 107, 149-150, 207, 208, 287-288) Defendant claimed one detective hit him in the ribs, but detective Vucko testified that no detective matching the description defendant gave was involved in the case. (R. 542-550, 567) Detective Vucko also testified that no one ever beat defendant in his presence and that defendant never complained of being beaten. (R. 567) Detective Vucko testified that he offered defendant food and drink, and defendant himself acknowledged that he never asked the first two teams of detectives for food and that one of the detectives allowed him to go to the bathroom. (R. 540-541) In his court-reported statement defendant acknowledged that the police had treated him well and had offered him food, drink and the use of the bathroom. (R. 551-554) The trial judge specifically found significant that defendant did not complain of mistreatment to the Assistant State's Attorney or the court reporter. (R. 635)

It is clear from the totality of the circumstances that defendant did not confess because he was coerced or because his will was overborn by his being "deprived of the basic necessities of life" as the Illinois Appellate Court found.

Rather defendant confessed because he was confronted with highly incriminating evidence found in his own bedroom and because it became clear to him that the explanation he initially gave to the police for this evidence was incredible.

The four victims were strangled to death, and one of them was found with one leg of a pair of green surgical pants around her neck. Underneath was a piece of tan material. (R. 275-282) The police found a bundle underneath defendant's bed when they searched his room pursuant to his consent to search. Inside this bundle they found two lengths of a khaki-type material, one of which had two knots in it and the other had one knot, a green pair of surgical pants, and bedsheets with red stains. (R. 135) They also went to the victims' apartment and found in a closet a khaki-material trench coat with a belt missing. (R. 137-138, 194)

When defendant was first confronted with this evidence he told the police that on the night of August 15, 1982, he saw a male black run out of the victims' apartment and drop a bundle. He picked up the bundle, discovered the bodies of the murder victims, took the bundle and put it under his bed and did not call the police. (R. 140-142, 565-566) The story defendant gave at the suppression hearing was even more

preposterous. He claimed that he told the police that he simply found the bundle by the 7th floor chute, played with the bundle, using it as a basketball, and eventually took it into his house by mistake. (R. 481-482)

Subsequently, when the police recovered the bundle after defendant signed a second consent to search, the police told defendant that his story did not make sense. He then confessed that he strangled the four victims, and he repeated his confession to an Assistant State's Attorney and to a court-reporter. (R. 148-149) The totality of the circumstances shows that defendant confessed because he realized that the police had recovered evidence of his guilt from his bedroom and thereby had caught him in his lies. The Appellate Court of Illinois erred in reversing the finding of the trial judge that defendant's confession was voluntary.

The evidence which the police obtained, including the physical evidence found in defendant's bedroom and defendant's confession was obtained without any violation of defendant's Fourth or Fifth Amendment rights. The State of Illinois urges this Court to grant certiorari to correct the erroneous ruling of the Appellate Court of Illinois which held that this evidence should have been suppressed.

III.

EVEN IF DEFENDANT WAS ILLEGALLY ARRESTED, INTERVENING CIRCUMSTANCES PURGED THE PRIMARY TAINT, AND SO DEFENDANT'S CONFESSIONS AND THE EVIDENCE RECOVERED FROM HIS BEDROOM WERE PROPERLY ADMITTED.

The Appellate Court of Illinois not only held that defendant was illegally seized in violation of the Fourth Amendment, but also held that there were no intervening events which broke the connection between defendant's illegal detention and the evidence obtained as a result thereform. The State of Illinois maintains, as argued above, that defendant was not illegally seized. However, if it is found tht he was, the State of Illinois asserts that intervening events purged the primary taint of the illegal detention.

This Court considered the admissibility of a confession which followed an illegal arrest in Wong Sun v. United States, 371 U.S. 471, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963); and Brown v. Illinois, 422 U.S. 590, 95 S. Ct. 2254, 45 L. Ed. 2d 416 (1975). In Brown this Court explained that in order for the causal chain, between the illegal arrest and the statements made subsequent thereto, to be broken, Wong Sun

requires not merely that the statement meet the Fifth Amendment standard of voluntariness but that it be sufficiently an act of free will to purge the primary taint. This Court went on to hold in Brown that the Miranda warnings are an important factor in determining whether the confession is obtained by exploitation of an illegal arrest, but they are not the only factor to be considered. The temporal proximity of the arrest and the confession, the presence of intervening circumstances, and, particularly, the purpose and flagrancy of the official misconduct are all relevant. 422 U.S. at 603-604.

In the instant case it is undisputed that defendant Ealy was advised of his Miranda rights on several occasions. In addition, the other Brown factors warrant the conclusion that defendant's confession should not be suppressed.

Very soon after he arrived at the police station defendant agreed to a search of his bedroom. His mother, who was at the station at the time, also agreed. The police prepared a consent to search form, explained it to defendant and defendant signed. When the police went to defendant's apartment with the form, defendant's mother admitted them and showed them defendant's room. There, under defendant's bed, they found a bundle which contained two lengths of khaki-

material, one of which had two knots and the other had one knot, a knife handle, a pair of green surgical pants and a bedsheet with red stains. These items were very significant because the four victims had been strangled and one of the victims was found with a pants leg from green surgical pants and a piece of tan material around her neck.

The detectives who found this evidence then went to the house of the detective who had attended the autopsies. This detective told them that the khaki-material found in the bundle was similar to the tan material he saw around the neck of one of the victims. The detectives then went to the victims' apartment and found a khaki-colored trench coat with the belt missing. They also found a knife blade without a handle that appeared to match the knife handle they had found in the bundle. Defendant was confronted with this evidence and gave the police a preposterous explanation for how the bundle came to be under his bed. When the police later told him that his story did not make sense he confessed that he strangled the four victims. The State of Illinois asserts that the consent to search which defendant made voluntarily and the recovery of highly incriminating evidence in his bedroom were intervening events which clearly show that defendant's confession was not obtained by exploitation of an illegal arrest.

The Brown decision also calls for a consideration of the purpose and flagrancy of the police conduct. Indeed, this may be the most important factor. (Dunaway v. New York, 442 U.S. 200, 226, 99 S. Ct. 2248, 2264 (1979) (Rehnquist, J., dissenting) The police conduct in the instant case was in no manner as flagrant as that of the police in Brown. In Brown the police broke into defendant's apartment and searched it when he was not home. They then waited for him, and when he arrived they pointed guns at him, told him he was under arrest, ordered him to stand against the wall, searched him and then brought him to the police station. This Court found that the manner in which Brown's arrest was effected gave the appearance of having been calculated to cause surprise, fright and confusion. 422 U.S. at 605. Nothing comparable occurred in the instant case. The detectives knocked on defendant's door and his mother let them in. They spoke with her for a few minutes and then, when defendnt came in, they asked him if he would be willing to come to the station and he agreed. They did not handcuff him, and they told his mother where they were going. Even in his own testimony defendant acknowledged that the police did not pull out guns or raise their voices and that they did not handcuff him. Indeed, his main concern at that

time appeared to be that he would be late for his date. If defendant was arrested at his apartment, this arrest was certainly not violent or designed to cause surprise, fright and confusion as in Brown.

Finally, the defendant's confession occurred well after the time of his arrival at the station. Thus the Brown factor of close temporal proximity of the arrest and the confession was not present. Brown's first statement was separated from his illegal arrest by less than two hours, and there was no intervening event of significance. Here, defendant Ealy first confessed orally to detectives at 9:30 a.m. on August 18, 1982, about twelve hours after he first came to the station, and there were significant intervening events, namely, the police searched defendant's bedroom with his permission, found evidence linking him with the murders and confronted him with the evidence. It has been said that if there are no relevant intervening circumstances, a prolonged detention may well be a more serious exploitation of an illegal arrest than a short one. Dunaway v. New York, 442 U.S. 200, 220, 99 S. Ct. 2248, 2261 (1979) (Stevens, J., concurring). However, in the instant case there were relevant intervening circumstances. The defendant did not confess because his will

was overborn by a prolonged detention. The defendant confessed because he was caught in lies while trying to explain highly incriminating evidence found in his bedroom which the police searched with his consent.

As Mr. Justice Powell stated in his concurring opinion in Brown v. Illinois, if an illegal arrest merely provides the occasion of initial contact between the police and the accused, and because of time or other intervening factors the accused's eventual statement is the product of his own reflection and free will, application of the exclusionary rule can serve little purpose. Brown v. Illinois, 422 U.S. 590, 610, 95 S. Ct. 2254 (1975) (Powell, J., concurring). If the Appellate Court of Illinois was right in finding that defendant was illegally arrested, then it was wrong in finding defendant's confession a direct product of the illegal arrest. The State of Illinois urges this Court to grant certiorari to correct this error.

CONCLUSION

For all the foregoing reasons, the State of Illinois respectfully requests that a writ of certiorari issue to review the judgment of the Appellate Court of Illinois, First Judicial District.

Respectfully submitted,

NEIL F. HARTIGAN,
Attorney General
State of Illinois
MARK L. ROTERT,
Assistant Attorney General
100 West Randolph Street
Suite 1200
Chicago, Illinois 60601

Attorneys for Petitioner.

RICHARD M. DALEY
State's Attorney
Cook County, Illinois,
500 Richard J. Daley Center
Chicago, Illinois 60602
THOMAS V. GAINER, Jr.,*
RIMAS F. CERNIUS,
Assistant State's Attorneys
Of Counsel

* Attorney of Record.
(312) 443-5496

APPENDIX

APPENDIX A

Docket No. 84-649 - March 31, 1986.
THE PEOPLE OF THE STATE OF ILLINOIS, Appellee,
v. JAMES EALY, Appellant.

JUSTICE MURRAY delivered the opinion of the court:

Following a jury trial, defendant James Ealy was found guilty of four counts of murder (Ill. Rev. Stat. 1983, ch. 38, par. 9-1) and sentenced to natural life imprisonment in the Illinois Department of Corrections, the sentence to be served consecutively with a previously imposed 23-year sentence on a conviction for rape. On appeal, defendant argues that: (1) based on the ground that his arrest was illegal, the trial court erred in denying his motions to suppress his confession and evidence obtained as a result of two searches of his residence; (2) the State's failure to produce photographs and a microanalyst's notes during discovery violated his right to due process; and (3) the prosecutor's improper remarks during closing rebuttal argument constituted reversible error. For the reasons set forth below, we reverse and remand.

The record reveals that at the hearing on defendant's motions to suppress, the following testimony was presented. On August 16, 1982, at approximately 12:55 p.m., Chicago Police Officer Dennis Vavrin discovered the bodies of

Christine, Mary Ann, Cora and Jontae Parker in their seventh floor apartment located in the Rockwell Gardens housing project at 2515 West Jackson, Chicago, Illinois. Christine, the 33-year-old mother of 15-year-old Mary Ann and 13-year-old Cora, was found in a bedroom of the apartment. Mary Ann and her 3-year-old son, Jontae, were discovered in the bathroom. Cora was found in a closet, next to the bathroom. All of the victims bore ligature marks around their necks, with the exception of Mary Ann who was discovered with a green cloth wrapped around her neck. A later examination of the premises by police evidence technicians revealed no fingerprints suitable for comparison. Dr. Robert Stein, the Cook County medical examiner who had been called to the scene, pronounced the victims dead and their bodies were removed from the apartment.

Shortly thereafter the police conducted a canvas of the building residents. Police officers went to defendant's mother's apartment located on the fourth floor and questioned her. Defendant, who was 17 years old, was present at that time but was not questioned. Later that afternoon, the police returned to Mrs. Ealy's apartment and spoke with defendant who told them that he had dated Mary Ann Parker until earlier

that year, he knew the other Parkers and that he did not know anyone who might have killed them. At approximately 11 p.m., several police officers reappeared at the apartment asking to see defendant and, finding he was not at home, told Mrs. Ealy to have him call them if he had any more information regarding the Parker homicides.

The next day, August 17, autopsies were performed on the victims by Dr. Stein. In attendance was Detective Thomas Blomstrand of the Chicago police department. Dr. Stein's examination disclosed that each victim had died as a result of ligature strangulation. His examination of Mary Ann revealed that the green cloth around her neck was a leg portion of a pair of green surgical pants. After removing the cloth from Mary Ann's neck, Dr. Stein also discovered a piece of tan material knotted on the right side and tied tightly around her neck. His examination of Jontae further revealed that he had been raped.

Thereafter, Detective Blomstrand reported to Area 4 police headquarters and communicated Dr. Stein's findings to other detectives present at a 5 p.m. roll call. Detectives Terrence Thedford and Patrick Harrington were among those in attendance. They were assigned to interview two of five

individuals, one of whom was defendant, who were known to frequently watch television in the victims' apartment. Thedford and Harrington arrived at defendant's residence, without a warrant, allegedly at 9 p.m. They identified themselves to Mrs. Ealy, stated they were working on the Parker homicides and asked to speak with defendant. Mrs. Ealy invited them in and sent her younger son to get defendant who was outside on the playground area of the building. When defendant arrived, the detectives asked him if he would come to the police station with them. Both detectives testified that they did not tell defendant that he had to go with them and defendant never indicated that he did not want to go with them. On direct examination of defendant, defense counsel orally made an offer of proof that defendant would testify that "he felt they (the detectives) would force him to go if he didn't cooperate" and "that one of the officers was standing by the door, blocking the door from his exit."

They then left the apartment—one detective in front of and one in back of defendant. Defendant was not handcuffed and the officers "did not pull their guns on him." He was transported to the police station in a squad car which was equipped with a wire screen between the front and rear seats and which lacked handles to the windows and doors in the rear.

Upon arriving at the Area 4 station at approximately 9:40 p.m., the detectives placed defendant in a second floor interview room, but did not give him Miranda warnings at that time. The room was windowless and contained a table and three chairs. The officers left defendant in the room for 20 minutes, then returned and interrogated him for 30 minutes, asking him to account for his whereabouts during the early morning hours of August 16. Determining that some discrepancies existed between defendant's account of his activities and the one previously given by his mother, the detectives left the room to discuss the inconsistencies. While out of the room, they became aware of the presence of Mrs. Ealy and told her about the inconsistencies between defendant's and her account of defendant's whereabouts on August 16. Contrary to Mrs. Ealy's testimony, they then asked Mrs. Ealy if she would speak to defendant about his story and she agreed. Contrary to defendant's testimony, they further testified that they asked defendant if he would speak with his mother and that he refused to do so.

Shortly thereafter, Thedford and Harrington were informed by another detective that defendant recently had been arrested for a rape which occurred in the same building where

defendant and the Parker family lived. After reviewing the case report of that rape, Thedford and Harrington returned to the interview room at approximately 11 p.m. and gave defendant Miranda warnings. Defendant said he understood his rights and the officers interrogated him for another 30 minutes. During that time, defendant was asked and agreed to sign a consent to search his bedroom. The detectives did not seek to obtain a search warrant. The officers also testified, contrary to Mrs. Ealy's testimony, that she had agreed to sign a consent to search form.

The next shift of detectives, Ralph Vucko and Victor Switski, were informed by Thedford and Harrington of the status of the investigation. Detective Vucko testified he prepared a consent to search form for Mrs. Ealy's signature. At approximately 1:30 p.m. on August 18, after finding that Mrs. Ealy had left the station, Vucko and Harrington took the form into the interview room. Vucko stated he asked defendant to sign the consent form after reading its contents to him and advising him that he was waiving "his right to the police having to have a search warrant to look in (his) house." Defendant, however, testified that although he signed the form, its contents were not read to him and he did not read it.

At approximately 1:45 a.m., Detectives Vucko and Switski arrived at defendant's residence. They testified they showed Mrs. Ealy the consent to search form signed by defendant, she permitted them to enter the apartment, and she showed them to defendant's bedroom. Mrs. Ealy, however, testified that the detectives asked her to sign a consent form, she asked them if it was a search warrant, they said no, and she said she would not sign it. She stated that they then pushed her aside, entered the apartment and went into defendant's bedroom. The detectives subsequently found a "bundle" underneath defendant's bed. It contained numerous items, including two lengths of khaki-type material, one of which was knotted at each end and the other with one knot in it. Other items found in the bundle were a bone-colored knife handle, a green pair of surgical pants, some bed sheets with red stains, a child's sweater, and a red sock. Vucko took the khaki material and some shoelaces he had found in defendant's dresser.

The detectives then left the apartment and went to Detective Blomstrand's home. They showed him the khaki material taken from the bundle and he told them it looked like the same material he had observed around Mary Ann Parker's neck at the autopsies he attended. Vucko and Switski then

returned to the Parkers' apartment. Vucko discovered a khaki-colored trench coat in a closet and noticed that although the coat had belt loops, the belt was missing. He also found a knife blade in the closet which appeared to him to match the handle he had seen in the bundle in defendant's bredroom. Vucko took both items and he and Switski returned to the police station, arriving at approximately 4 a.m. on August 18. At that time, Switski testified that he went to the interview room occupied by defendant and locked the door.

At approximately 5 a.m., Vucko and Switski entered the interview room. Detective Thedford also entered, "took defendant's underwear and gym shoes" away from him and then left. Defendant was again given his Miranda rights, he indicated he was willing to further discuss the Parker homicides, and the officers confronted him with the items they had recovered from his bedroom and the Parker crime scene. Thereafter, defendant told the officers that on August 15, at about 11:30 p.m., he was near the Parkers' apartment and saw a large black man running from the apartment carrying a large bundle which he dropped. After picking up the bundle, defendant went into the Parkers' apartment and found the victims' bodies. He said he then left the apartment, taking the

bundle with him to his mother's apartment, placed the bundle under his mother's bed and went to sleep. Defendant, however, later denied giving this account to Detectives Vucko and Switski. Defendant also denied that he signed a second consent to search form at the end of this interrogation session, even though he later acknowledged his signature on the form which was admitted into evidence.

At approximately 6 a.m., Detectives Vucko and Switski went to defendant's residence bearing the second consent form. They testified that they showed Mrs. Ealy the consent form and told her that they were there to pick up the rest of the items which were left in the bundle. Contrary to Mrs. Ealy's testimony, Vucko and Switski stated that she permitted them to enter the apartment and to take the items. Mrs. Ealy testified that the detectives shoved her, entered her apartment and went into defendant's bedroom. Finding that the bundle had been removed from its previous location, they told Mrs. Ealy to bring it to them, she did so, and they left.

Vucko and Switski returned to the Area 4 station with the bundle and interviewed defendant again at approximately 9:30 a.m. on August 18. Switski gave defendant Miranda warnings and Detective Vucko then told defendant that

his previous story did not make sense. At that point, defendant became excited, started crying and said he "would tell the truth." Vucko and Switski stated that defendant then told them that on August 15 he had been drinking with friends. He later went to the Parkers' apartment at approximately 11:30 p.m. and several members of the Parker family "made fun of his red eyes." Defendant then described to the detectives how he strangled the four victims.

Thereafter, Detective Switski called the State's Attorney's Office, and assistant State's Attorney Christine Campbell arrived at Area 4 at 10:45 a.m. After explaining her position to defendant and giving him Miranda warnings, defendant repeated his confession to her and agreed to make a written statement. At 1 p.m., defendant signed a waiver of his constitutional rights, his statement was taken down by a court reporter and at approximately 2:30 p.m. he signed the statement. At 3 p.m., defendant was allowed to see his mother. She had arrived at the station at approximately 10 a.m. and had been told she had to wait before seeing defendant. During that time, Mrs. Ealy called Beverly Bearden, a case worker volunteer for Catholic Charities, who arrived at the station at 2:30 p.m. and was also told she would have to wait to speak to defendant.

Defendant testified that when he spoke with his mother and Bearden, he told them he confessed because he "couldn't take it" any more. He stated that he had not had anything to eat or drink throughout his detention, that the officers would not permit him to sleep and that they would not let him leave. Defendant further stated that he had been repeatedly "punched in the ribs" by an unidentified officer and threatened that he would not be able to sleep or to see his mother until he signed a confession. He also stated that he in fact did not kill the Parkers, that he had been high on wine when he found a bundle by the garbage chute on the seventh floor where the Parker apartment was located, that he had used the bundle as a basketball, tossing it into garbage cans as he made his way down to his mother's apartment on the fourth floor, and that he went home to sleep when he reached his mother's apartment, tossing the bundle on the floor of his bedroom.

At the conclusion of the evidence, the trial court denied the motions to suppress defendant's confession and evidence obtained as a result of the two searches. The court also subsequently denied defendant's motion to exclude the photographs and microanalyst's notes pertaining to the evidence

obtained from the searches, but advised defense counsel that he could again raise his objection to this evidence at trial.

At trial, the witnesses' testimony was virtually the same as their testimony at the suppression hearing. Defendant, however, did not testify. In addition, when defense counsel again raised his objection to admission of the photographs and the microanalyst's notes, the motion was denied. Defendant's motion for a mistrial, citing alleged prejudicial and inflammatory statements made by the State in closing rebuttal argument, was also denied, as was his post-trial motion.

On appeal, defendant contends that the trial court erred in denying his motions to suppress his confession and the evidence obtained as a result of the two searches of his bedroom. Specifically, defendant argues that the police, lacking probable cause, arrested him at the time they took him from his residence and, therefore, his confession and other incriminating evidence were the fruits of an illegal arrest, requiring suppression.

Probable cause exists if the facts and circumstances known by the arresting police officers are sufficient to cause a reasonable man to believe that an offense has been committed and that the defendant has committed the offense. (People v.

Creach (1980), 79 Ill. 2d 96, 101, 402 N.E.2d 228.) An arrest occurs when the police detain a person in a manner such that a reasonable, innocent person in the same situation would not consider himself free to go. (People v. Reynolds (1983), 94 Ill. 2d 160, 165, 445 N.E.2d 766.) All evidence directly traceable to an arrest made without probable cause must be suppressed where there are no intervening events to break the connection between a defendant's illegal detention and the evidence obtained as a result therefrom. People v. Travis, (1984), 122 Ill. App. 3d 671, 676, 462 N.E.2d 654.

Here, the State concedes that no probable cause to arrest defendant existed at the time he was taken from his residence, but argues defendant was not "seized" at that time so as to require probable cause. Instead, the State argues that defendant was not considered under arrest until 4 a.m., at which time probable cause existed, and that defendant's consent to the searches and his confession were voluntarily made. In support of its contention that defendant was not seized at the earlier time, the State relies on People v. Reed (1982), 104 Ill. App. 3d 331, 432 N.E.2d 979, and People v. Gale (1979), 72 Ill. App. 3d 23, 390 N.E.2d 921. We find these cases unpersuasive.

In Reed, police officers investigating a murder and robbery did not ask the defendant if he wanted to be questioned at his apartment, but instead asked him to accompany them to the police station. At the station, the defendant was given Miranda warnings and, after four hours of interrogation, confessed to the crimes. In Gale, the defendant, was asked to accompany an officer to the police station regarding a theft investigation. At the station, the defendant was given Miranda warnings, but was not told he was under arrest. After being interviewed for 30 minutes, he confessed to committing the theft. Both the Reed and Gale courts concluded that the defendants were not illegally arrested because a reasonable, innocent person in the same position as defendants would not have considered himself under arrest.

The circumstances of defendant's detention in the present case greatly differ from those in the Reed and Gale cases. Here, defendant was continuously interrogated for an 18-hour period during which time he was deprived of the basic necessities of life. For 18 hours defendant had nothing to eat or drink and disputedly was not allowed to sleep. Only once during the entire time was a restroom made available to him. On the other hand, in Reed and Gale, the defendants were only

detained for four hours and 30 minutes, respectively, and were not subjected to the deprivations defendant here endured. We further note that the Reed court, in fact, specifically considered the absence of a continuous, lenghty interrogation in concluding that Reed had not been illegally arrested.

We find that the circumstances in the present case are more analogous to those in People v. Townes (1982), 91 Ill. 2d 32, 435 N.E.2d 103, cert. denied (1982), 459 U.S. 878, 74 L. Ed. 2d 143, 103 S. Ct. 174. There, as here, the defendant was questioned over a lengthy period of time by the police. On the basis of a vague physical description given by a rape victim, the police asked the defendant to accompany them to the police station instead of questioning him at his home. At the station, he was placed in an interview room and interrogated five times during a 12-hour period, during which time he was repeatedly given Miranda warnings. The police obtained the defendant's consent to search his home and car, they never told him he was free to leave and they subsequently obtained a confession from him. the Townes court, relying on the apposite case of Dunaway v. New York (1979), 442 U.S. 200, 60 L. Ed. 2d 824, 99 S. Ct. 2248, held that the defendant's detention resembled a traditional arrest and the circumstances indicated that a

reasonable person in the same position as the defendant would not have believed he was free to leave. The court also held that the seizure of the defendant had an improper "quality of purposefulness" in that it appeared that the police were conducting an "expedition for evidence" in the hope of obtaining sufficient information upon which to predicate the probable cause necessary for an arrest. 91 Ill. 2d 32, 37-38; 442 U.S. 200, 218, 60 L. Ed. 2d 824, 839, 99 S. Ct. 2248, 2259.

We believe the circumstances in the instant case present far more compelling reasons than Townes for requiring reversal of the trial court's judgment. Here, in addition to the obvious similarities of this case and Townes, the police continuously interrogated defendant eight times during an 18-hour period—three interrogation sessions more and 6 hours longer than the interrogation of the defendant in Townes. Throughout his 18-hour detention, as previously noted, defendant also was deprived of the basic necessities of life. He was not offered anything to eat or drink for 18 hours. A restroom was made available to him on only one occasion during his detention. Although it is disputed whether defendant was permitted to sleep during this time, we note that if in fact he did so he would have had to sleep on the floor or sitting up,

since there was no bed in the room. In addition, any sleep that defendant may have gotten would have been, at best minimal due to the interruptions created by the repeated interrogation sessions which usually lasted at least 30 minutes each, i.e., 11 p.m., 1:30 a.m., 5 a.m., 9:30 a.m., 10:45 a.m., 1 p.m. and 2:30 p.m. Finally, we note that defendant was subjected to having his underwear and gym shoes, which he had been wearing, taken away from him prior to giving any confession.

Under the totality of the circumstances, we conclude that defendant's detention, like that of the defendant in Townes, resembled a traditional arrest and indicates that a reasonable, innocent person in defendant's position would not have believed he was free to leave. We also find that the unconstitutional misconduct of the police was a purposeful expedition for evidence in the hope of obtaining sufficient information upon which to predicate the probable cause necessary for defendant's arrest. We note that even though the detectives stated they had probable cause to arrest defendant at 4 a.m. as a result of the evidence obtained from their first search of his bedroom, they nonetheless did not call in an Assistant State's Attorney at that time, but instead interrogated defendant two more times until obtaining a second

consent to search form and a confession from him at 9:30 a.m. Accordingly, since the police lacked probable cause to arrest defendant at the time they took him from his residence, which the State concedes, we hold that defendant was illegally seized in violation of the fourth amendment.

We recognize, although the State does not so argue, that the illegality of an arrest does not per se render incriminating evidence inadmissible where there are intervening events to break the connection between a defendant's illegal detention and the evidence obtained as a result thereform. (People v. Travis (1984), 122 Ill. App. 3d 671, 676, 462 N.E.2d 654.) Under the facts and circumstances of the instant case, clearly no intervening events occurred. Accordingly, defendant's confession and the evidence obtained as a result of the two searches required suppression since the taint of the illegal arrest was not dissipated.

In light of the above disposition, we need not address defendant's further contentions raised on appeal. We feel compelled, however, to comment on the State's closing rebuttal argument because similar remarks complained of by defendant could recur at retrial. We find that a number of the State's remarks were grossly improper, prejudicial,

inflammatory and designed to arouse the passions of the jury against defendant. These remarks could not possibly aid the jury in weighing or evaluating the evidence. (People v. Potenik (1950), 407 Ill. 337, 348, 95 N.E.2d 414.) "(N)o matter how reprehensible (a defendant's crime), 'be he sinner or a saint, (he) has the right to expect that his fate will be fixed with reference only to the circumstances of the crime with which he is charged.'" (People v. Hope (Feb. 21, 1986), No. 58462, slip op. at 9, quoting People v. Gregory (1961), 22 Ill. 2d 601, 606, 177 N.E.2d 120.) We accordingly so admonish the State.

Finally, we believe that the evidence at trial was sufficient for the trier of fact to conclude that defendant was guilty beyond a reasonable doubt. This does not mean we are making a finding as to defendant's guilt or innocence which would be binding on retrial, but rather our consideration of the sufficiency of the evidence admitted at trial will remove the risk of subjecting defendant to double jeopardy. See People v. Taylor (1979), 76 Ill. 2d 289, 309, 391 N.E.2d 366.

For the foregoing reasons, the judgment of the circuit court of Cook County is reversed and the cause remanded for a new trial.

REVERSED AND REMANDED.

LORENZ AND PINCHAM, JJ., concur.

APPENDIX B

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62806
(217) 782-2035

October 2, 1986

No. 63473 - People of the State of Illinois, petitioner, v. James Ealy, respondent. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

Simon, J., took no part.

The mandate of this Court will issue to the Appellate Court on October 24, 1986.

Supreme Court, U.S.
FILED
JAN 2 1987
JOSEPH F. SPANIOL, JR.
CLERK

(2)

No. 86-930

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

STATE OF ILLINOIS,

Petitioner,

v.

JAMES EALY,

Respondent.

On Petition for Writ of Certiorari to the Appellate Court of Illinois, First Judicial District

RESPONDENT'S BRIEF IN OPPOSITION

ROBERT L. GRAHAM *
RANDALL E. MEHRBERG
JENNER & BLOCK
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

Attorneys for Respondent, James Ealy

* Counsel of Record

Midwest Law Printing Co., Chicago 60611, (312) 321-0220

39 PP

TABLE OF CONTENTS

	PAGE
OPINION BELOW	1
COUNTERSTATEMENT OF QUESTIONS PRESENTED	2
COUNTERSTATEMENT OF THE CASE	3
REASONS FOR DENYING THE WRIT	9
I.	
PROCEDURAL HISTORY AND DECISION BELOW	9
II.	
THE PETITIONER'S FIRST ARGUMENT, WHICH ASSERTS THAT THE RESPONDENT WAS NOT SEIZED BY THE POLICE, DOES NOT WARRANT REVIEW BY THIS COURT	11
A. The Illinois Appellate Court's Decision, Which Simply Applied Firmly Established Precedent To The Undisputed Facts Of This Case, Does Not Raise Novel Questions Or A Conflict In The Law	11
B. The Appellate Court Correctly Concluded That The Respondent Was Illegally Arrested And That The Fruits Of His Arrest Should Be Suppressed	12
III.	
THE SECOND ISSUE RAISED IN THE PETITION, WHETHER RESPONDENT'S STATEMENT AND CONSENTS WERE VOLUNTARY, IS NOT WORTHY OF CERTIORARI	17
A. The Question Of Voluntariness Is Not Before This Court	17

B. The Factual Determination As To Whether The Respondent's Statement And Alleged Consent Were Voluntary Does Not Raise Any Special Or Important Reason For Granting Certiorari 18

C. Respondent's Statement And Consent To Search Were Involuntarily And Unlawfully Obtained, Requiring Suppression Of The Statement And The Evidence Seized In The Searches 18

1. Respondent's Statement Was Not Voluntarily Given 18

2. The Police Searched Mrs. Ealy's Apartment Without A Warrant Or Valid Consent 21

a. The police did not obtain a valid consent from Respondent 22

b. The police did not obtain a valid consent from Mrs. Ealy 24

IV.

THE PETITIONER'S THIRD ARGUMENT, THAT THE TAINT OF RESPONDENT'S ILLEGAL ARREST WAS PURGED BY ATTENUATING CIRCUMSTANCES, IS NOT WORTHY OF CERTIORARI 25

A. The Petitioner's Claim Is Not Properly Before This Court 25

B. The Petitioner's Argument, Which Is Factual In Nature, Does Not Raise Any Special Or Important Reasons For Granting Certiorari .. 25

C. No Intervening Events Attenuated The Connection Between Respondent's Illegal Arrest And His Alleged Statement And Consent To Search 26

CONCLUSION 29

TABLE OF AUTHORITIES

Cases: PAGE

Brown v. Illinois, 422 U.S. 590 (1975) ... 12, 26, 27, 28

Bumper v. North Carolina, 391 U.S. 543 (1968) .. 24

Cardinale v. Louisiana, 394 U.S. 437 (1969) 18, 25

Dunaway v. New York, 442 U.S. 200 (1979) 2, 3, 11, 12, 13, 15-17, 26-28, 29

Florida v. Royer, 460 U.S. 491 (1983) 14

Gallegos v. Colorado, 370 U.S. 49 (1962), *reh'g denied*, 370 U.S. 965 (1962) 19

Haley v. Ohio, 332 U.S. 596 (1948) 19

In re Gault, 387 U.S. 1 (1967) 19, 20

Malloy v. Hogan, 378 U.S. 1 (1964) 18

Miranda v. Arizona, 384 U.S. 436 (1966) ..... *passim*

People v. DeMorrow, 59 Ill. 2d 352, 320 N.E.2d 1 (1974) 22

People v. Devine, 17 Ill. App. 3d 1053, 309 N.E.2d 76 (4th Dist. 1974) 19

People v. Finklea, 119 Ill. App. 3d 448, 456 N.E.2d 680 (2d Dist. 1983) 13

People v. Kincaid, 87 Ill. 2d 107, 429 N.E.2d 508 (1981), *cert. denied*, 455 U.S. 1024 (1982) 19

People v. Lind, 370 Ill. 131, 18 N.E.2d 189 (1938) .. 23

People v. Moriarity, 33 Ill. 2d 399, 211 N.E.2d 704 (1965) 19

People v. Norcutt, 44 Ill. 2d 256, 255 N.E.2d 442 (1970) 19

People v. Parnell, 31 Ill. App. 3d 627, 334 N.E.2d 403 (3d Dist. 1975) 19

People v. Prude, 66 Ill. 2d 470, 363 N.E.2d 371 (1977), *cert. denied*, 434 U.S. 930 (1977) 20

People v. Reynolds, 94 Ill. 2d 160, 445 N.E.2d 766 (1983) 12

People v. Sampson, 86 Ill. App. 3d 687, 408 N.E.2d 3 (1st Dist. 1980) 12

People v. Savory, 82 Ill. App. 3d 767, 403 N.E.2d 118 (3d Dist. 1983), *appeal denied*, 81 Ill. 2d 598 (1980), *cert. denied*, 449 U.S. 1011 (1981) 19

People v. Shaver, 77 Ill. App. 3d 709, 396 N.E.2d 643 (2nd Dist. 1979) 23

People v. Simmons, 60 Ill. 2d, 173, 326 N.E.2d 383 (1975) 20

People v. Starling, 64 Ill. App. 3d 671, 381 N.E.2d 817 (5th Dist. 1978) 19

People v. Stone, 61 Ill. App. 3d 654, 378 N.E.2d 263 (5th Dist. 1978) 20

People v. Szerletich, 86 Ill. App. 3d 1121, 408 N.E.2d 1098 (4th Dist. 1980) 16

People v. Townes, 91 Ill. 2d 32, 435 N.E.2d 103 (1982), *cert. denied*, 459 U.S. 878 (1982) 11-16, 29

People v. Travis, 122 Ill. App. 3d 671, 462 N.E.2d 654 (1984) 20, 26

People v. Turner, 56 Ill. 2d 201, 306 N.E.2d 27 (1973) 19

Schneckloth v. Bustamonte, 412 U.S. 218 (1973) .. 21-23

Taylor v. Alabama, 457 U.S. 687 (1982) 27

United States v. Mendenhall, 446 U.S. 544 (1980) .. 12

Webb v. Webb, 451 U.S. 493 (1981) 25

Wilson v. Schnettler, 365 U.S. 381 (1961), *reh'g denied*, 365 U.S. 890 (1961) 12

Wong Sun v. United States, 371 U.S. 471 (1963) .. 26

Constitutional Provisions:

U.S. Constitution:
Fourth Amendment 2, 12
Fifth Amendment 18
Fourteenth Amendment 18

State of Illinois Constitution:
Art. I, § 6 12
Art. I, ¶ 10 18

Treatises:

3 W. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment*, 1 8.2(b), at 656 (1978) .. 23

In The

Supreme Court of the United States

October Term, 1986

STATE OF ILLINOIS,

Petitioner,

v.

JAMES EALY,

Respondent.

On Petition for Writ of Certiorari to the Appellate Court of Illinois, First Judicial District

RESPONDENT'S BRIEF IN OPPOSITION

This brief is submitted by respondent James Ealy ("Respondent") in opposition to the Petition for a Writ of Certiorari ("Petition") filed by the State of Illinois ("Petitioner").

OPINION BELOW

The opinion of the Illinois Appellate Court, First Judicial District, is reported at 100 Ill. Dec. 221, 497 N.E.2d 101 (1st Dist. 1986), and is included as Appendix A to the State's Petition to this Court. The order of the Supreme Court of Illinois, denying the State's petition for leave to appeal, was entered on October 2, 1986. That order is included as Appendix B to the Petition.

COUNTERSTATEMENT OF QUESTIONS PRESENTED

The Petitioner purports to raise three questions for review by this Court. Two of those issues are not properly before the Court.

The second question raised by the Petitioner is whether the Respondent's statement and consents to search were voluntary. This issue was not ruled upon by the Illinois Appellate Court, and therefore is not properly before this Court.

The third question raised by the Petitioner is whether intervening circumstances removed the taint from Respondent's illegal arrest. This issue was not raised by Petitioner in the trial court, in the Illinois Appellate Court, or in the Illinois Supreme Court, and therefore is waived.

Only the first question identified in the Petition is legitimately presented to this Court: whether the Illinois Appellate Court erred in holding, unanimously, that the Respondent was illegally arrested in violation of his rights under the Fourth Amendment to the United States Constitution and this Court's decision in *Dunaway v. New York*, 442 U.S. 200 (1979).

Contending that Respondent's Fourth Amendment rights were not violated, Petitioner acknowledges that the police had no probable cause to arrest Respondent. Instead, Petitioner's argument, seeking the exercise of this Court's jurisdiction and the reversal of the decision below, is based on the contention that Respondent voluntarily cooperated with police and was not under arrest, despite the undisputed facts showing that (a) Respondent, a teenager with a tenth grade education, was taken without a warrant by police from his home in the middle of the

night; (b) Respondent was thereafter held, alone, without benefit of counsel, family or friends, for over 18 hours at police headquarters until two warrantless middle-of-the-night searches could be conducted and a statement extracted; and (c) while confined at police headquarters, Respondent was interrogated repeatedly by teams of police officers, working in shifts, who questioned Respondent at least 8 times at length in a small, windowless, locked room, during which time Respondent was deprived of food, drink and sleep, and Respondent's underwear and gym shoes, which he had been wearing, were taken away from him.

The unanimous decision of the Illinois Appellate Court finding that Respondent was illegally arrested is heavily fact specific and is consistent with the decision of this Court in *Dunaway v. New York*, 442 U.S. 200 (1979) and the decisions of the Illinois Supreme Court. It does not conflict with any decision of this Court or any State Supreme Court, and does not present any legal issue worthy of review.

COUNTERSTATEMENT OF THE CASE

The Statement of Facts in the State's Petition fails to set forth fully and fairly the facts of this case, as established in the pretrial motion to suppress evidence. Accordingly, Respondent sets forth the following additional facts.*

* Documents, exhibits and matters occurring at trial or during the transcribed hearings are cited by reference to a record page number, *e.g.*, "R. 1234."

Approximately a day and a half after the Parkers were killed, the police had no leads. Late in the day on August 17, 1982, two detectives from the Chicago Police Department, Detectives Thedford and Harrington, went to the Ealy apartment to interview James Ealy. (R. 65-66, 109, 1015.) At that time, James Ealy, one of five children of Willie Thompson and Katherine Ealy, was 17 years old. (R. 468, 1407-08.) James had progressed slowly and suffered learning problems in school. He did not complete the tenth grade. (R. 1408, 1412.) After leaving school, James was employed as a dishwasher at a restaurant in downtown Chicago. (R. 1413.)

No witness had suggested that James Ealy was connected with the deaths of the Parkers. (R. 64-65, 940.) Nor did fingerprints or any other evidence tie James to the crime. (R. 64, 955-56.) In fact, the police acknowledged that there was nothing to tie James Ealy to the Parker deaths. (R. 607, 608-09.) To the police, James was a former boyfriend of Mary Ann Parker, one of the victims.

Nothing unusual or suspicious happened when the police arrived at the Ealy apartment on August 17. The police agreed that Mrs. Ealy was cooperative. (R. 109.) She sent her youngest son, Virgil, out to find James, who was not home when the police arrived. (R. 69, 110, 1016, 1420.) Shortly thereafter, James returned to the apartment. (R. 69, 110, 1016, 1421.)

Rather than question James at home, the detectives told James and his mother that "it was necessary" for James to go with them to the police station. (R. 324, 472.) James told the police officers that he had a date that evening. (R. 609.) The police responded that they would bring him home soon. (R. 325.) Upon leaving the apartment, Detectives Thedford and Harrington began to exert pressure on James. The police placed themselves in front of and behind James as they escorted him to the police car. (R.

325, 472, 1423.) The officers then placed James in the back of their police car. (R. 473.) The car had no door or window handles on the inside and had a wire screen separating the front seat from the back seat. (R. 473.)

Detectives Thedford and Harrington drove to Area 4 Homicide and immediately placed James in a small, windowless interrogation room. (R. 473.) The interrogation room was clearly one in which James Ealy was confined and not free to leave. Indeed, the very conditions of the room were coercive and confining. It was a small room, approximately nine feet by twelve feet in size. (R. 83.) It had no windows. It had a heavy wooden door that was closed during the interrogations. (R. 83-84, 116, 213-14, 273-74, 473-74.) The door had no handle on the inside and could not be opened from within the interrogation room. (R. 84, 213-14, 473, 1172.)

The officers left James alone in the room for twenty minutes. James then banged on the door and asked to leave. (R. 485-86.) Instead, the detectives returned and interrogated James for approximately thirty minutes, questioning him about his whereabouts on August 16, 1982. (R. 39, 82; slip op. at 5.) Although James provided no incriminating information and the police had no basis to detain him, they did not release him. The police officers' refusal to release James occurred notwithstanding James' requests to leave, the fact that the police were aware that James was late for a date with his girlfriend, and the detectives' earlier promise that they would bring James home soon. By this time, James believed that he was under arrest.

Mr. Ealy testified that from the outset of his detention, he felt coerced by the police. (R. 472, 485.) The physical confines, the duration of the interrogation and the manner in which he was treated all combined to create an intimidating and coercive environment. (R. 442, 473-88.)

Indeed, James' reaction to this coercion was immediately apparent, even to the interrogating officers. The detectives admitted that, as early as 10:00 to 10:30 p.m. on August 17, James "was trembling and . . . his pulse in his temple [was] throbbing." (R. 98, 121-22, 124.) Despite these problems, the police did not offer James the opportunity to lie down, did not offer him the opportunity to see his mother or an attorney, did not offer him food or water and did not even advise him of his rights to counsel or to remain silent until he had been at the police station for over one and one-half hours. (R. 121-22, 486, 1171-75.) At no time did the police tell James that he was free to leave.

James remained in the interrogation room from the time he arrived at Area 4 Homicide on the evening of August 17 until he was formally charged with murdering the Parkers at approximately 3:00 p.m. on August 18. (R. 71, 111, 476.) James was in the interrogation room overnight for at least eighteen consecutive hours. (R. 71, 81, 111.) During that time, the police questioned James repeatedly and continuously. The police also removed his underwear and gym shoes. Slip op. at 17. James was subjected to at least eight different interrogations, all without counsel, in the same interview room. He was questioned in shifts by teams of detectives and police officers. (R. 39, 49, 82-104, 138-39, 145, 201, 202-03, 204-05, 485-86, 1174.)*

---

* The police officers' determination to coerce information from James was not limited to the interrogations. While James was still in custody, Detectives Vucko and Switski conducted two warrantless searches of Mrs. Ealy's apartment in the middle of the night. The first search occurred at 1:45 a.m. on August 18 and lasted for one-half hour. (R. 132.) The second search occurred at 6:00 a.m. (R. 143.) On both occasions, Mrs. Ealy was disturbed at home while in her night clothes and attempting to sleep. (R. 341, 348.)

There is no dispute that a search warrant was not obtained for either search. The investigating detectives admitted that they

(Footnote continued on following page)

By 9:30 a.m., James was visibly upset and crying. (R. 147, 1172-75.) It is undisputed that he still had not seen a lawyer or his mother; he had not eaten or had anything to drink; and he had little, if any, sleep. (R. 485-86, 1171-75.) Nonetheless, as the police conceded, they continued to interrogate James and tell him that his story made no sense. (R. 147, 1175.) Up until this time, James had not confessed. (R. 186.)

Finally, after being continuously interrogated throughout the night by various teams of detectives, and having been psychologically and physically coerced, James broke down, began to cry, and agreed to give the police the statement they had sought through the night. (R. 147, 1174-75.)

Not suprisingly, the product of these coercive tactics was distorted and unreliable. The "statement" James finally gave was noteworthy for its repeated inconsistencies with the undisputed testimony and physical evidence in the case. While James "confessed" that he singlehandedly strangled four members of the Parker family at 11:45 p.m. on August 15, (R. 1323-31), Willemina Rucker, a close friend and relative of Kristine Parker, testified at trial that she

---

footnote continued

made no effort whatsoever to obtain a search warrant (R. 223, 1071, 1079), despite the fact that there was ample time and opportunity to obtain one. (R. 162-63, 216.) Rather, the searches were made pursuant to Respondent's alleged "consent," which the police maintain was obtained from James while he was at the police station. According to the police, James consented to the first search four and one-half hours after he was taken from his home to the police station. (R. 98, 121-22, 124.) After conducting the first search, the detectives made some additional stops and returned to the police station at about 4:15 a.m. (R. 138, 213-14.) The detectives again interrogated James and allegedly obtained another consent to search at 5:30 a.m., eight and one-half hours after James first was picked up. (R. 142-44, 523-25, 485-86.) As set forth in greater detail on pp. 21-25, *infra*, the alleged consents were the fruits of James' illegal arrest and were not voluntarily given.

spoke with Kristine Parker at approximately 7:30-8:00 a.m. on August 16, about 8 hours after James supposedly killed Kristine. (R. 1388.) In addition, Jesse Moore, a neighbor, saw Kristine Parker walk into her apartment at 12:15 a.m. on August 16, approximately one-half hour after James was supposed to have killed her. (R. 1339-40.) Finally, Dr. Stein, Chief Medical Examiner for Cook County, testifed that the Parkers died within "a number of hours before he arrived on the scene" at 1:50 p.m. on August 16. (R. 911.) Cora Parker's death certificate, sworn to by Dr. Stein, stated that she died at 12:30 p.m. on August 16, over 12 hours after the time of death specified in James' statement. (R. 914.)

In addition, the fact that the ligature marks and method of strangulation varied among the victims also is at variance with James' statement that he killed the Parkers by himself. (R. 907-09.) This aspect of the statement is further contradicted by the fact that none of the victims were bound or gagged in any way. (R. 910.)

In the "confession", James also stated that he used items seized from his mother's apartment and repeatedly shown to him during the interrogations as murder weapons. Yet, those items did not match the items found in the Parkers' apartment. Specifically, the belt used to kill Mary Ann Parker did not match the material seized from the Ealy apartment in size or color. (R. 909, 1167-69, 1231, 1250.) Furthermore, rather than tying James to the crime, the blood, mucus, sperm, semen, fiber and visual examinations conducted by the Crime Lab showed that the remaining items seized from Mrs. Ealy's apartment had no relationship whatsoever to the Parker deaths.

Finally, James' statement indicates that he killed all four Parkers because Cora Parker teased him about having a red eye. However, there was no evidence at trial that James ever had a red eye. Nor was there any other tes-

timony that James was anywhere near the Parkers' apartment on August 15 or 16, or that James felt any hostility toward the Parkers.

After signing the written statement, James was finally permitted to see his mother. (R. 488.) When Mrs. Ealy saw James for the first time, she was accompanied by Beverly Bearden, a case worker employed by Catholic Charities. (R. 430.) Ms. Bearden came to the police station at Mrs. Ealy's request. (R. 359, 435.) Upon her arrival, she asked to see James, but was told "not yet." (R. 437-38.)

Mrs. Ealy and Ms. Bearden first saw James at approximately 3:00 p.m. on August 18. (R. 438.) Upon entering the interrogation room, they observed that James "was trembling" and "was terribly upset, he was crying." (R. 392, 440.) James immediately told his mother and Ms. Bearden that the police had pressured him very hard and told him that he would never see his mother again unless he confessed. (R. 442.)

REASONS FOR DENYING THE WRIT

I.

PROCEDURAL HISTORY AND DECISION BELOW.

The Respondent was convicted of four counts of murder on February 3, 1984. On March 2, 1984, the trial court denied the Respondent's post-trial motion, entered judgment, and sentenced the Respondent to a term of natural life in prison. On March 9, 1984, the Respondent filed his Notice of Appeal in the Illinois Appellate Court.

In a unanimous decision, the Illinois Appellate Court reversed Respondent's convictions and remanded for a

new trial. In particular, the Illinois Appellate Court held that Respondent was arrested without probable cause in violation of his fundamental constitutional rights:

> Under the totality of the circumstances, we conclude that the defendant's detention . . . resembled a traditional arrest and indicates that a reasonable, innocent person in defendant's position would not have believed he was free to leave.

Slip op. at 17. The Appellate Court went on to state that "the unconstitutional misconduct of the police was a purposeful expedition for evidence in the hope of obtaining sufficient information upon which to predicate the probable cause necessary for defendant's arrest." Slip op. at 17.

Because the Appellate Court reversed the convictions based upon a determination that the Respondent was illegally arrested, it did not reach the merits of the Respondent's other contentions raised on appeal.* However, the Court did conclude "that a number of the State's remarks (in closing argument) were grossly improper, prejudicial, inflammatory and designed to arouse the passions of the jury against defendant. These remarks could not possibly

---

* In addition to arguing that the fruits of his illegal arrest should be suppressed, the Respondent challenged the use at trial of his statement and the items seized from his mother's apartment on the independent ground that the statement and consent to search were involuntary and unlawfully obtained. The Respondent also argued that his rights to due process and pre-trial discovery were violated by the State's failure to produce crucial and exculpatory microanalyst studies, reports, comparisons and photographs in advance of the suppression hearing and trial. Finally, Respondent contended that the trial court erred by denying his motions for a mistrial and his post-trial motion, where the State's closing argument included a comparison of Respondent to the notorious mass-murderer Richard Speck, accused defense counsel of lying, repeatedly commented on Respondent's decision not to testify, and contained inflammatory statements of the prosecutor's personal beliefs about Respondent's guilt.

aid the jury in weighing or evaluating the evidence." Slip op. at 18-19. The Court admonished the State not to repeat those or similar comments at retrial. The State did not file a petition for rehearing in the Appellate Court.

Following the Illinois Appellate Court's decision, the State filed a petition for leave to appeal in the Illinois Supreme Court. The Illinois Supreme Court denied the State's petition for leave to appeal, without dissent. Thereafter, the State filed the instant Petition.

II.

THE PETITIONER'S FIRST ARGUMENT, WHICH ASSERTS THAT THE RESPONDENT WAS NOT SEIZED BY THE POLICE, DOES NOT WARRANT REVIEW BY THIS COURT.

A. The Illinois Appellate Court's Decision, Which Simply Applied Firmly Established Precedent To The Undisputed Facts Of This Case, Does Not Raise Novel Questions Or A Conflict In The Law.

In its decision in this case, the Illinois Appellate Court simply applied the established precedent set forth in this Court's decision in *Dunaway v. New York*, 442 U.S. 200 (1979) and the Illinois Supreme Court's decision in *People v. Townes*, 91 Ill. 2d 32, 435 N.E.2d 103 (1982), *cert. denied*, 459 U.S. 878 (1982), to the undisputed and unique facts of this case. Contrary to the Petitioner's argument, the Appellate Court did not rule that "the police may not question a person at the police station when he consents to come to the station for questioning." Petition at i. Rather, the court held that "[u]nder the totality of the circumstances, we conclude that defendant's detention, like that of the defendant in *Townes*, resembled a traditional arrest and indicates that a reasonable, innocent person in defendant's position would not have believed that he was free to leave." Slip op. at 17.

As the Illinois Supreme Court recognized by denying the State's Petition For Leave To Appeal, the Appellate Court's fact specific decision does not present special or important reasons for review. The decision is consistent with this Court's decision in *Dunaway* and its progeny, and does not raise novel questions of law. Nor does it conflict with decisions of other federal courts or Illinois courts. Thus, the Petition should be denied.

B. The Appellate Court Correctly Concluded That The Respondent Was Illegally Arrested And That The Fruits Of His Arrest Should Be Suppressed.

In addition to the reasons set forth above, this case does not warrant further review because the Illinois Appellate Court's decision correctly applied clear precedent to the facts of this case. It is well established in American jurisprudence that the Fourth Amendment to the United States Constitution requires that the police have probable cause to believe that an individual has committed a particular criminal offense before he can be arrested. *Dunaway v. New York*, 442 U.S. 200, 216 (1979); *Wilson v. Schnettler*, 365 U.S. 381, 383 (1961), *reh'g denied*, 365 U.S. 890 (1961); *People v. Townes*, 91 Ill. 2d 32, 435 N.E.2d 103 (1982), *cert. denied*, 459 U.S. 878 (1982). The Constitution of the State of Illinois also interposes a probable cause requirement. *See* Art. I, § 6.

An arrest occurs when the police detain a person in a manner such that a reasonable, innocent person in the same situation would not consider himself free to go. *United States v. Mendenhall*, 446 U.S. 544, 554-55 (1980); *People v. Reynolds*, 94 Ill. 2d 160, 445 N.E.2d 766 (1983). If the arrest is not supported by probable cause, all evidence directly traceable to the unlawful detention must be suppressed. *Brown v. Illinois*, 422 U.S. 590 (1975); *People v. Sampson*, 86 Ill. App. 3d 687, 693-96, 408 N.E.2d 3, 9-10 (1st Dist. 1980).

To determine whether a reasonable, innocent person would consider himself in custody, courts review the material circumstances surrounding that custody. Among the factors considered are:

> . . . the location, time, length, mood and mode of the interrogation; the number of police officers present and the presence or absence of friends or family of the accused; any *indicia* of formal arrest; the manner in which the person questioned got to the place of interrogation, *i.e.*, voluntarily on his own, in response to a police request, or on a verbal command indicating compulsion; whether he voluntarily assists police in their interrogation; whether the subject is allowed to walk within and from the location of the interrogation unaccompanied by police; and the age, intelligence, and mental makeup of the accused.

People v. Finklea, 119 Ill. App. 3d 448, 452, 456 N.E.2d 680 (2d Dist. 1983). Another important factor is whether the police tell the person that he is free to leave. *Dunaway v. New York*, 442 U.S. 200 (1979); *People v. Townes*, 91 Ill. 2d 32, 435 N.E.2d 103 (1982), *cert. denied*, 459 U.S. 878 (1982). The underlying theme in all of these factors is whether the police conduct, when viewed objectively, would suggest to a reasonable person that he was not free to refuse to cooperate with the police.

The rule against illegal seizures was clearly established by this Court in *Dunaway v. New York*, 442 U.S. 200 (1979). In *Dunaway*, the police took the petitioner into custody without probable cause and transported him by police car to a police station. Petitioner was not told he was under arrest, although the police later testified that they would have used force to bring him in. At the station, the police placed petitioner in an interrogation room, gave him *Miranda* warnings, and questioned him. 442 U.S. at 203. This Court held that this constituted an illegal seizure. 442 U.S. at 216.

This Court found that the petitioner's detention was similar to a traditional arrest because he was not questioned briefly where he was found, but instead was taken by police car to a police station and placed in an interrogation room. Moreover, the police never informed him he was free to leave. 442 U.S. at 212. This Court held that the Fourth Amendment clearly applied to these facts, whether or not they were termed an "arrest" under state law. 442 U.S. at 212. *See also Florida v. Royer*, 460 U.S. 491 (1983).

The Appellate Court's decision in the instant case is also consistent with settled Illinois law. Indeed, the Appellate Court's decision in this case relied heavily on the Illinois Supreme Court's decision in *People v. Townes*, 91 Ill. 2d 32, 435 N.E.2d 103 (1982), *cert. denied*, 459 U.S. 878 (1982). In *Townes*, the police requested the defendant to accompany them to the police station. When the defendant asked why, the police told him they were investigating a home invasion and assault. The police gave the defendant a choice of either going to the station in a police car or driving his own car. He chose to ride with the police.

Upon arriving at the station, the police took the defendant to an interview room and read him his *Miranda* warnings. The police then questioned the defendant on five separate occasions over the next twelve hours until he gave a statement. During this twelve-hour period, the police obtained the defendant's consent to search his apartment and subsequently confronted him with the fruits of that search. The defendant was never told he was free to leave or that he was not under arrest. 91 Ill. 2d at 37.

The Illinois Supreme Court held in *Townes* that the police illegally seized the defendant when they asked him to accompany them to the station on less than probable cause. 91 Ill. 2d at 37. In reaching its decision, the Illi-

nois Supreme Court stressed that the defendant was not questioned at his home, but rather was immediately taken to the station; his home was searched and he was confronted with the fruits of that search; he was repeatedly read his *Miranda* warnings; and he was never told he was free to go. The Court held that, under these circumstances, a reasonable person would not have believed he was free to leave. 91 Ill. 2d at 37.

The similarity between *Dunaway*, *Townes* and the present case is striking. The police did not question the Respondent at home. Rather, they told him that they were investigating the Parker murders and represented that "it was necessary" that he speak with them at the station. (R. 324, 472.) The police took James by squad car to the station and placed him in a small interrogation room. (R. 473.) After interrogating him, the police did not take James home, as they had earlier promised (R. 325), notwithstanding the State's admission that the police did not have probable cause to detain James. Rather, the police continued the illegal detention, magnifying its effects with every passing hour.

In an expedition for evidence, James was questioned on eight separate occasions over at least an 18-hour period. (R. 71, 81, 111.) During this period, the police twice searched his mother's home and subsequently confronted him with the fruits of those searches. (R. 142-44, 145.) The police, who acknowledged that they were aware that James had scheduled a date for that evening (R. 609), never told him he was free to leave or that he was not under arrest; indeed, James testified that his repeated requests to leave were denied. (R. 485-86.)* Moreover, James never saw an

* Defense counsel attempted repeatedly at the suppression hearing to ask Detectives Thedford and Harrington whether they

(Footnote continued on following page)

attorney, family member or friend, and never left the interrogation room. As the Appellate Court noted, James had little if any sleep, had his underwear and gym shoes (which he had been wearing) taken from him, and was provided with no food or water during the 18-hour interrogation. Slip op. at 16-17.

Applying *Dunaway* and *Townes*, the Appellate Court concluded that James Ealy was illegally arrested. As the Illinois Supreme Court concluded in *People v. Townes*, 91 Ill. 2d 32, 37, 435 N.E.2d 103, *cert. denied*, 459 U.S. 878 (1982), "a reasonable person would not have believed he was free to leave" the police station under the circumstances of this case.*

In its Petition to this Court, the Petitioner concedes that the police did not have probable cause to arrest the Respondent.** Because the Appellate Court concluded

---

footnote continued
would have prevented James from leaving at the time they took him to Area 4 or during the interrogations. (R. 70, 74, 75, 80, 113, 114, 116, 122-24, 172.) The State's uniform objections to defense counsel's questions were consistently sustained by the trial court. The trial court's refusal to allow this testimony constituted reversible error. *People v. Szerletich*, 86 Ill. App. 3d 1121, 408 N.E.2d 1098 (4th Dist. 1980).

* Even the police officers thought James Ealy was under arrest. The police reports show that the police considered James Ealy to be under arrest at 2:15 a.m. on August 18, 1982 (R. 1687.), notwithstanding the Petitioner's repeated admissions that probable cause did not exist at that time. See, *e.g.*, State's App. Br. at 24-26.

** At trial, the State argued that the Respondent was free to leave the police station until 9:30 a.m. on August 18, 1982, approximately twelve hours after the police first detained Mr. Ealy. (R. 608-09.) In its brief to the Appellate Court, the State changed gears and argued that probable cause arose at 4:00 a.m. on August 18, 1982. (State's App. Br. at 24-26.) In its Petition to this Court, the State does not argue that probable cause ever arose. Thus, the Petitioner's entire argument rests on its assertion that the Respondent voluntarily cooperated with the police.

that in this case, a reasonable person would not have believed he was free to leave the police station, it was required to order the suppression of Respondent's statement and the items seized from his mother's apartment. In so ruling, the Appellate Court simply applied the undisputed facts to the well-established case law in Illinois. It did not reverse any of the trial court's factual findings, but merely recognized that the trial court had misapplied the law to those facts. The decision of the Appellate Court is correct and does not warrant review by this Court.

III.

THE SECOND ISSUE RAISED IN THE PETITION, WHETHER RESPONDENT'S STATEMENT AND CONSENTS WERE VOLUNTARY, IS NOT WORTHY OF CERTIORARI.

A. The Question Of Voluntariness Is Not Before This Court.

Absent intervening events to break the connection between an illegal arrest and the evidence obtained therefrom, it makes no difference if Respondent's decision to supply evidence was "voluntary" for Fifth Amendment purposes. *Dunaway v. New York*, 442 U.S. 200, 217-18 (1979). In its appeal to the Illinois Appellate Court, the State did not argue that there were intervening events to break the connection between James Ealy's illegal arrest and the evidence obtained therefrom.* Thus, the Illinois Appellate Court did not find it necessary to rule on the Respondent's argument that his statement and consent to search were involuntarily and unlawfully obtained.

---

* In addition, the State failed to make this argument at trial or before the Illinois Supreme Court.

Because the Illinois Appellate Court did not decide whether the Respondent's alleged statement and consents were involuntary, that question is not properly before this Court. *Cardinale v. Louisiana*, 394 U.S. 437, 438 (1969). Moreover, the fact specific question of voluntariness does not present the type of issue for review by this Court which is contemplated by Supreme Court Rule 17.

B. The Factual Determination As To Whether The Respondent's Statement And Alleged Consent Were Voluntary Does Not Raise Any Special Or Important Reason For Granting Certiorari.

The question of whether a statement and consent to search were voluntarily given is fact specific. As demonstrated below, the parameters for such decisions are well defined in numerous opinions of this Court and the Illinois courts. The application of that firmly-established law to the unique and undisputed facts of this case does not raise novel questions of law or a conflict with other decisions of this Court, other federal courts or Illinois courts. Nor does it raise special or important reasons for review. As such, even if the issue of voluntariness had been decided by the Illinois Appellate Court, it would not warrant review by this Court. The Petition should be denied.

C. Respondent's Statement And Consent To Search Were Involuntarily And Unlawfully Obtained, Requiring Suppression Of The Statement And The Evidence Seized In The Searches.

1. Respondent's Statement Was Not Voluntarily Given.

The Constitution's guarantees against self-incrimination are well known. *See*, U.S. Const. Amend. V, XIV; *Malloy v. Hogan*, 378 U.S. 1, 8 (1964). The Illinois Constitution similarly safeguards a defendant's right not to testify against himself. Ill. Const. Art. I, ¶ 10. The privilege

against self-incrimination is necessary to limit the intrusion of the state into personal matters and to protect the truth-seeking function of criminal trials. *In re Gault*, 387 U.S. 1, 47 (1967); *Miranda v. Arizona*, 384 U.S. 436, 460 (1966).

The importance of the privilege against self-incrimination has caused courts to scrutinize carefully any asserted waiver of the privilege. As this Court and the Illinois Supreme Court have repeatedly noted, the State bears the heavy burden of proving that the accused knowingly and voluntarily waived his rights. *Miranda v. Arizona*, 384 U.S. at 475; *People v. Kincaid*, 87 Ill. 2d 107, 429 N.E.2d 508 (1981), *cert. denied*, 455 U.S. 1024 (1982). Thus, confessions are strictly examined, subject to the "test of whether the constitutionally-required warning was given and, if given, whether the rights set out by that warning were knowingly, intelligently, and voluntarily waived." *People v. Parnell*, 31 Ill. App. 3d 627, 630, 334 N.E.2d 403, 406 (3d Dist. 1975).

Among the factors considered to determine if the waiver is knowing, intelligent and voluntary are: whether the defendant was detained illegally, *People v. Moriarity*, 33 Ill. 2d 399, 402, 211 N.E.2d 704, 706 (1965); whether counsel was present at the time of the confession, *In re Gault*, 387 U.S. 1, 55 (1966); *Gallegos v. Colorado*, 370 U.S. 49 (1962), *reh'g denied*, 370 U.S. 965 (1962); *People v. Norcutt*, 44 Ill. 2d 256, 255 N.E.2d 442, 444 (1970); whether family members were present, *Haley v. Ohio*, 332 U.S. 596, 601 (1948); the defendant's level of intelligence, *People v. Devine*, 17 Ill. App. 3d 1053, 309 N.E.2d 76, 79 (4th Dist. 1974); *People v. Turner*, 56 Ill. 2d 201, 306 N.E.2d 27, 30 (1973); and the length and circumstances of the interrogation, *People v. Savory*, 82 Ill. App. 3d 767, 403 N.E.2d 118 (3d Dist. 1983), *appeal denied*, 81 Ill. 2d 598 (1980), *cert. denied*, 449 U.S. 1011 (1981); *People v. Star-*

ling, 64 Ill. App. 3d 671, 381 N.E.2d 817 (5th Dist. 1978); *People v. Stone*, 61 Ill. App. 3d 654, 378 N.E.2d 263 (5th Dist. 1978).

In addition, when, as here, a juvenile is involved, "the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair." *People v. Simmons*, 60 Ill. 2d 173, 180, 326 N.E.2d 383 (1975), *quoting In re Gault*, 387 U.S. 1, 55 (1967). Hence, the instant record, where a juvenile is involved, requires special scrutiny, since juveniles can be "easy victim[s] of the law." *People v. Travis*, 122 Ill. App. 3d 671, 462 N.E.2d 654 (1984), *quoting Haley v. Ohio*, 332 U.S. 596, 599 (1948); *accord People v. Prude*, 66 Ill. 2d 470, 363 N.E.2d 371 (1977), *cert. denied*, 434 U.S. 930 (1977); *People v. Simmons*, 60 Ill. 2d at 181.

In the present case, after considering "both the characteristics of the accused and the details of the interrogation", it cannot be said that James Ealy knowingly, intelligently, and voluntarily confessed on August 18, 1982. *People v. Simmons*, 60 Ill. 2d at 179. As discussed in the Counterstatement of the case on pp. 3-9, *supra*, and in Section II, pp. 12-17, *supra*, the facts of this case clearly establish that James Ealy's statement was anything but voluntary.

Indeed, throughout the interrogation, James was emotionally distraught. Detective Harrington testified that after being in custody for only 1½ hours and being questioned once by the police, James was trembling and the pulse in his temple was throbbing. (R. 98, 121-22, 124.) Yet, the police did not tell James that he could go home, did not offer him food or drink, did not allow him to lie down, and did not offer to obtain medical aid. (R. 121-22, 486, 1172-75.)

Detective Vucko also testified that at 9:30 a.m. on August 18, 1982, after being held incommunicado for over 12 hours, James broke down and was crying as a result of police questioning. (R. 147, 1174.) Beverly Bearden, a caseworker from Catholic Charities who saw James immediately after his transcribed confession, testified that at 3:00 p.m. on August 18, 1982, James was "terribly upset" and "crying." (R. 440.) Moreover, James testified that he confessed only because the police threatened and intimidated him. (R. 442.) Under these circumstances, the confession was not voluntary.

In addition to the coercive conditions surrounding the statement, the statement itself demonstrates that it was not voluntarily given. The statement that was finally extracted, after over 18 hours of interrogation and rehearsal, contradicts the uncontested facts of this case. See *supra* at pp. 7-9.

An analysis of these factors and the totality of the circumstances in this case demonstrate that James Ealy did not knowingly, intelligently and voluntarily waive the privilege against self-incrimination. His statement was the product of coercive, repeated questioning of a teenage boy by shifts of police determined to extract responses which suited them. Furthermore, the statement is replete with purported statements of fact, believed to be accurate by the police at the time of the statement, but now acknowledged to be inaccurate in light of subsequent investigation.

2. The Police Searched Mrs. Ealy's Apartment Without A Warrant Or Valid Consent.

In *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973), this Court recognized that:

> It is well settled under the Fourth and Fourteenth Amendments that a search conducted without a warrant issued upon probable cause is "*per se* unreasonable . . . subject only to a few specifically established and well delineated exceptions." [Citations omitted.] It is equally well settled that one of the specifically established exceptions to the requirements of both a warrant and probable cause is a search conducted pursuant to consent. [Citations omitted.]

In the present case, it is undisputed that the police did not have, and made no effort to obtain, a warrant to search Katherine Ealy's apartment at 1:45 a.m. or at 6:00 a.m. on August 18, 1982. (R. 223, 1071, 1079.) The Petitioner instead maintained that the police legally searched the apartment pursuant to consent given by James Ealy and Katherine Ealy. This assertion not only is contradicted by the facts in this case, but also is without legal basis.

a. The police did not obtain a valid consent from Respondent.

In addressing warrantless searches based on consent, this Court in *Schneckloth v. Bustamonte* ruled that the State must demonstrate that the consent was voluntarily given, and not the result of duress or coercion, express or implied. 412 U.S. at 248-49. *Accord, People v. DeMorrow*, 59 Ill. 2d 352, 320 N.E.2d 1 (1974). The question of whether a consent is "voluntary" is a question of fact to be determined from the totality of the circumstances. 421 U.S. at 248-49. *Accord, People v. DeMorrow*, 59 Ill. 2d at 361. This Court went on to state that the definition of voluntariness "has always taken into account evidence of minimal schooling, low intelligence, and the lack of any effective warnings to a person of his rights." 421 U.S. at 248.

In *Schneckloth v. Bustamonte*, this Court also stressed that the place where consent is given is relevant. After reiterating its view in *Miranda* that the nature of custodial surroundings produces an inherently coercive situation, this Court commented that, "since consent searches will normally occur on a person's own familiar territory, the specter of incommunicado police interrogation in some remote station is inapposite." 412 U.S. at 247.

An individual's mental or emotional state also is relevant to determining whether consent is voluntarily given. *See* 3 W. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* 1 8.2(b), at 656 (1978). Thus, in *People v. Lind*, 370 Ill. 131, 18 N.E.2d 189 (1938), the Illinois Supreme Court held the defendant's wife's consent was invalid because she was in a "highly nervous state" when she gave it. *See also People v. Shaver*, 77 Ill. App. 3d 709, 396 N.E.2d 643 (2nd Dist. 1979), where the Illinois Appellate Court invalidated defendant's consent to be photographed due to the coercive manner in which it was obtained.

The present case raises precisely the "specter" alluded to by this Court in *Schneckloth*. The Respondent did not consent to the search while on familiar territory, but rather supposedly did so while being held incommunicado at a remote police station. As discussed *supra*, at pp. 5-7, 15-16, and 18-21, the circumstances surrounding James' confinement at the police station were extremely coercive. Consequently, as Detective Harrington acknowledged, James was trembling and the pulse in his temple was throbbing shortly before he allegedly consented to the first search. (R. 98, 121-22, 124.) James gave his second alleged consent at approximately 5:30 a.m., after having been held incommunicado, without sleep, food, or drink, without the benefit of an attorney, (R. 485-86), and after having been confronted with the fruits of the first illegal search. (R. 142-44, 523-25.)

Moreover, the first consent form was defective on its face. James could not validly consent to it because it was unintelligible. The form, admittedly filled out by the police for Mrs. Ealy's signature, but signed by James Ealy, states on its face that James is the "Lessee" of an apartment which he shares with "*James Ealy son.*" (R. 168, 217, 1070; A. 52.) All of those representations are inaccurate: Mrs. Ealy is the Lessee, not James; and James is obviously not his own "son." Furthermore, James, a 17-year-old high school dropout, clearly is not "aware of the legal requirements of a search warrant," despite the boilerplate language on the consent form. Under these circumstances, James Ealy was incapable of providing a knowing and voluntary consent.

b. The police did not obtain a valid consent from Mrs. Ealy.

Katherine Ealy flatly denied ever giving the police permission to search her apartment. (R. 343.) Rather, when the police asked her permission to search, she demanded that they obtain a search warrant. (R. 343-45.) It is undisputed that she never signed a consent to search form. (R. 1072-73.)

However, even assuming *arguendo* that Mrs. Ealy did cooperate, her acquiescence did not constitute a valid consent. In *Bumper v. North Carolina*, 391 U.S. 543 (1968), this Court firmly held that mere acquiescence to a claim of lawful authority is not a valid consent. 391 U.S. at 549. As this Court stated, "when a law enforcement officer claims authority to search a home under a warrant, he announces in effect the occupant has no right to resist the search. The situation is instinct with coercion—albeit colorably lawful coercion. Where there is coercion there cannot be consent." 391 U.S. at 550.

The situation is no different here where police presented Mrs. Ealy with a purportedly lawful consent to search form and announced—not "may we search"—but "we [are] here to recover other items from beneath [James'] bed." Thus, under the circumstances, Katherine Ealy could not have provided a valid consent to search her apartment. Consequently, the Petition should be denied.

IV.

THE PETITIONER'S THIRD ARGUMENT, THAT THE TAINT OF RESPONDENT'S ILLEGAL ARREST WAS PURGED BY ATTENUATING CIRCUMSTANCES, IS NOT WORTHY OF CERTIORARI.

A. The Petitioner's Claim Is Not Properly Before This Court.

For the first time, the State now argues in its Petition that "intervening events purged the primary taint of the illegal detention." (Petition at 32.) This argument should not be countenanced, however, because the State never raised it below. As this Court has repeatedly held, issues not raised in the courts below cannot be raised in this Court. *Webb v. Webb*, 451 U.S. 493, 499 (1981); *Cardinale v. Louisiana*, 394 U.S. 437, 439 (1969). Thus, the Petition should be denied.

B. The Petitioner's Argument, Which Is Factual In Nature, Does Not Raise Any Special Or Important Reasons For Granting Certiorari.

Like the other issues raised in the Petition, the factual determination of whether intervening circumstances existed in this case is not worthy of certiorari, especially when raised here for the first time. In view of the total absence of conflict in the law or the creation of new law, the Petitioner's previously ignored argument does not belong on the Supreme Court docket.

C. No Intervening Events Attenuated The Connection Between Respondent's Illegal Arrest And His Alleged Statement And Consent To Search.

The Petitioner's belated argument that the connection between Respondent's statement and illegal arrest were attenuated by the giving of *Miranda* warnings and two middle-of-the-night searches of his mother's apartment, which were themselves the fruits of Respondent's illegal arrest, also should be rejected as meritless by this Court. Perhaps the Petitioner recognized this previously when it chose not to raise the issue in the Illinois Appellate Court or the Illinois Supreme Court. Certainly the Illinois Appellate Court recognized the argument was without merit, notwithstanding the Petitioner's failure even to argue the matter, stating:

> We recognize, although the State does not so argue, that the illegality of an arrest does not *per se* render incriminating evidence inadmissible were the intervening events to break the connection between a defendant's illegal detention and the evidence obtained as a result therefrom. *People v. Travis*, (1984), 122 Ill. App.3d 671, 676, 462 N.E.2d 654.) Under the facts and circumstances of the instant case, clearly no intervening events occurred. Accordingly, defendant's confession and the evidence obtained as a result of the two searches required suppression since the taint of the illegal arrest was not dissipated.

Slip op. at 18.

The Petitioner concedes that this Court's holding in *Wong Sun v. United States*, 371 U.S. 471 (1963), requires that, in order for the taint of an illegal arrest to be broken, subsequent statements not only must meet the Fifth Amendment standard of voluntariness, but also must be made of sufficient free will so as to purge the taint. In *Brown v. Illinois*, 422 U.S. 590, 602 (1975), and *Dunaway v. New York*, 442 U.S. 200, 217 (1979), this Court

held that where police arrested and transported a suspect to police headquarters without probable cause, the confession obtained through custodial investigation was not admissible at trial, even though the defendant had received *Miranda* warnings. Those cases "firmly established that the fact that a confession may be 'voluntary' for purposes of the Fifth Amendment, in the sense that *Miranda* warnings were given and understood, is not by itself sufficient to purge the taint of the illegal arrest." *Taylor v. Alabama*, 457 U.S. 687, 690 (1982).

Further, in *Taylor*, this Court found that a visit from a suspect's girlfriend and companion, in addition to *Miranda* warnings, were not the kind of intervening events sufficient to break the connection between the illegal arrest and the confession. This Court also ruled that an arrest warrant based on fingerprints, which were themselves the fruit of the illegal arrest, failed to constitute sufficient attenuation.

In the instant case, the Petitioner points to no intervening circumstances other than the recitation of *Miranda* warnings and two middle-of-the-night searches of Respondent's mother's apartment. Petition at 34. Both examples are specious. The searches and the alleged evidence they produced only served to exert further pressure, surprise and confusion upon the Respondent. They were not the type of events this Court contemplated in *Brown*, *Dunaway*, and *Taylor*. In addition, the Petitioner's assertion that the searches were intervening events ignores the illegality of the searches themselves, as well as this Court's holding in *Taylor*. Moreover, the searches were the fruits of the Respondent's illegal arrest. Accordingly, they cannot be used to justify the continued detention and interrogation of the Respondent, which resulted in a coerced statement. *Taylor v. Alabama*, *supra*, 457 U.S. at 692-93.

Similarly, as stated above, the recitation of *Miranda* warnings is not an intervening event. Pursuant to the clear precedent of this Court, such warnings alone do not purge the taint of the Respondent's illegal arrest. *Dunaway* at 217; *Brown* at 602-03. Furthermore, in this case, the Respondent did not even receive *Miranda* warnings during the first interrogation. Rather, he was advised of his *Miranda* rights during his second interrogation, several hours after he was first picked up by the police. (R. 121-22, 486, 1171-75.)

Unable to point to the necessary intervening circumstances, the Petitioner also argues that the illegal arrest in this case was not sufficiently flagrant to require reversal. This assertion is absurd in light of the police's expedition for evidence in this case, which included at least 8 lengthy interrogations of a 17-year-old boy of limited intelligence, in the absence of counsel, friends or family, over an 18-hour period in a small, windowless, locked room, without food, water or sleep. As in *Dunaway v. New York*, Respondent was seized without probable cause "in the hope that something might turn up." 422 U.S. at 218. It is hard to imagine a more flagrant expedition for evidence designed to obtain a statement through surprise, fright and confusion.

The Petitioner also argues that the taint of Respondent's illegal arrest is attenuated because his statement was not obtained until more than 12 hours after he was first illegally arrested. This argument is without merit here, because the repeated interrogations of Respondent throughout the night, while in police custody and unrepresented by counsel, served only to exacerbate Respondent's fright and confusion. Indeed, the Petitioner seems to admit this when it quotes *Dunaway v. New York* for the proposition that "a prolonged detention may well be a

more serious exploitation of an illegal arrest than a short one." 422 U.S. at 220 (Stevens, J., concurring). Petition at 36.

Because the Respondent's arrest clearly was illegal, and because there were no intervening events prior to his alleged consent to search and statement, it is disingenuous for the State to argue that the statement and consents were a product of the Respondent's "reflection and free will." Petition at 37. The Illinois Appellate Court was correct in finding that "clearly no intervening events occurred" after the Respondent's illegal arrest. The Illinois Supreme Court chose not to disturb that decision. The Respondent respectfully submits that the Petitioner has not provided this Court with any reason to review the Illinois Appellate Court's well-reasoned decision.

CONCLUSION

In sum, the Petitioner's arguments to this Court are based on the resurrection of one argument that properly was rejected by the Illinois Appellate Court and Illinois Supreme Court under the firmly-established precedent of this Court, and upon two other arguments which were either never presented or never ruled upon in the state courts below, and which are equally without merit.

This case is very fact specific, and does not raise novel questions of law. The Illinois Appellate Court's decision is fully consistent with this Court's decision in *Dunaway v. New York* and the Illinois Supreme Court's decision in *People v. Townes*. As such, none of the reasons for

review suggested by the State warrant the expenditure of this Court's resources.

Respectfully submitted,

ROBERT L. GRAHAM *
RANDALL E. MEHRBERG
JENNER & BLOCK
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

Attorneys for Respondent,
James Ealy

* Counsel of Record

December 31, 1986